

EXHIBIT 9



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Transcript of Hearing

Date: March 11, 2021

Case: White -v- Compass Marketing Inc.

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Transcript of Hearing
Conducted on March 11, 2021

1 (1 to 4)

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| 1 | <p>1 VIRGINIA:</p> <p>2 IN THE CIRCUIT COURT OF ARLINGTON COUNTY</p> <p>3 - - - - - x</p> <p>4 DANIEL J. WHITE and :</p> <p>5 MICHAEL R. WHITE, on :</p> <p>6 behalf of themselves : Case No.</p> <p>7 and, derivatively, on : CL19003628-00</p> <p>8 behalf of COMPASS :</p> <p>9 MARKETING, INC., :</p> <p>10 Plaintiffs, :</p> <p>11 v. :</p> <p>12 COMPASS MARKETING, INC., :</p> <p>13 and JOHN D. WHITE, :</p> <p>14 Defendants. :</p> <p>15 - - - - - x</p> <p>16 Hearing before The Honorable LOUISE M. DiMATTEO</p> <p>17 Conducted Virtually</p> <p>18 Thursday, March 11, 2021</p> <p>19 10:04 a.m. EST</p> <p>20 Job No.: 359487</p> <p>21 Pages: 1 - 104</p> <p>22 Reported By: Paul P. Smakula</p> | 3 |
| 2 | <p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF PLAINTIFFS:</p> <p>3 PATRICK J. McDONALD, ESQUIRE</p> <p>4 CAMERON/McEVOY, PLLC</p> <p>5 4100 Monument Corner Drive</p> <p>6 Suite 420</p> <p>7 Fairfax, Virginia 22030</p> <p>8 (703) 273-8898</p> <p>9</p> <p>10 GREGORY T. LAWRENCE, ESQUIRE</p> <p>11 LAWRENCE LAW, LLC</p> <p>12 800 Third Avenue</p> <p>13 28th Floor</p> <p>14 New York, New York 10022</p> <p>15 (410) 837-6995</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> | 4 |
| 2 | <p>1 HEARING before The Honorable LOUISE M.</p> <p>2 DiMATTEO, conducted virtually:</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9 Pursuant to notice, before Paul P. Smakula,</p> <p>10 Notary Public in and for the State of Maryland.</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> | 4 |

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2 (5 to 8)

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| 5 | <p>1 PROCEEDINGS</p> <p>2 THE COURT: So by the agreed order that</p> <p>3 was entered by the Court previously, there are</p> <p>4 eight motions scheduled for today. I don't know</p> <p>5 if there was any discussion on the order of</p> <p>6 things. It seems to me a lot of issues tend to</p> <p>7 overlap with each other, at least of the concerns</p> <p>8 raised and some of the issues discussed seem to</p> <p>9 overlap a little bit, if not a lot. So I don't</p> <p>10 need to have repetitive arguments if they apply,</p> <p>11 as we discussed previously or however that works.</p> <p>12 I think what's easiest for me is doing one</p> <p>13 motion at a time in favor of, opposed to, and that</p> <p>14 sort of thing, keep them sequestered, if you will,</p> <p>15 compartmentalized, and then we'll go to the next</p> <p>16 one. So if you'd like, we can go in order of what</p> <p>17 you all put in the agreed order if there's no</p> <p>18 other suggestion.</p> <p>19 MR. McDONALD: Your Honor, good morning,</p> <p>20 this is Patrick McDonald, I'm local counsel for</p> <p>21 the plaintiffs in this matter. I think from an</p> <p>22 introductory perspective, I think the issues kind</p> | 7 |
| 6 | <p>1 of fall into three categories. There's a</p> <p>2 scheduling set of issues, there's a set of</p> <p>3 discovery issues, and within the discovery issues</p> <p>4 there are kind of sub issues of when things are</p> <p>5 going to be done, but also separate from that</p> <p>6 there's an issue of entry of a protective order,</p> <p>7 which sort of is I think the kickoff for a lot of</p> <p>8 what happens on the discovery side.</p> <p>9 So I'm prepared -- as local counsel I</p> <p>10 normally wouldn't be the one arguing, but I'm</p> <p>11 prepared for the plaintiffs to argue the</p> <p>12 scheduling side of things and -- and why certain</p> <p>13 things should be scheduled when. Mr. Lawrence,</p> <p>14 whose camera and microphone appears to be off</p> <p>15 right now, I'll look into that, but he's going to</p> <p>16 be arguing the substantive discovery issues on</p> <p>17 that.</p> <p>18 And on to the extent the Court wants to</p> <p>19 hear introductory remarks from anybody, I'm</p> <p>20 prepared to start in that regard. But whatever</p> <p>21 order you think is appropriate, I think we'll go</p> <p>22 with that.</p> | 8 |
| | <p>1 THE COURT: All right. Let me hear from</p> <p>2 -- who's going to be arguing on behalf of Compass?</p> <p>3 MR. STERN: Your Honor, this is Stephen</p> <p>4 Stern, I'll be arguing on behalf of Compass. Just</p> <p>5 to be clear, Ms. Harris represents another</p> <p>6 defendant in this case.</p> <p>7 THE COURT: I recognize that.</p> <p>8 MR. STERN: I did obviously want to give</p> <p>9 deference to how the Court wants to handle this,</p> <p>10 but as you noted, so many of the issues do</p> <p>11 overlap, and it seems that in certain respects a</p> <p>12 lot of the arguments will be repetitive in certain</p> <p>13 ways, but some arguments are separate and</p> <p>14 distinct. I do have some notes prepared by</p> <p>15 motion, but at the same time, some of the motions</p> <p>16 necessarily overlap so it's hard to keep them all</p> <p>17 separate and distinct.</p> <p>18 You know, I was trying to think of a way</p> <p>19 that would be the best way to approach this, and</p> <p>20 what would be the most efficient way of doing it,</p> <p>21 and I'm not sure there is necessarily a clear path</p> <p>22 here, but I do think maybe if there is each of the</p> | |
| | <p>1 parties can be stating what they're, you know,</p> <p>2 significance of the factual background and then</p> <p>3 going each of the different motions and asking for</p> <p>4 the different forms of relief that exists. That</p> <p>5 might make it a little more streamlined and</p> <p>6 perhaps shorten the hearing, but I can't be sure</p> <p>7 of that.</p> <p>8 THE COURT: Okay. It seems to me</p> <p>9 Ms. Harris has a unique circumstance in as much as</p> <p>10 she's appearing specially to have a matter of</p> <p>11 personal jurisdiction adjudicated by the court on</p> <p>12 Mr. White's case, the defendant. And it strikes</p> <p>13 me that that might be the one we handle first.</p> <p>14 Only because there's a lot of discovery flowing</p> <p>15 and maybe that's the way we treat it as we -- that</p> <p>16 appears to me -- so my reaction to some of these</p> <p>17 motions was -- especially with regard to expedited</p> <p>18 hearings or setting hearings, what struck me</p> <p>19 initially was that certainly Ms. Harris's motion</p> <p>20 regarding personal jurisdiction ought to be</p> <p>21 attended to early.</p> <p>22 And then also there is several other</p> | |

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3 (9 to 12)

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| 9 | <p>1 motions, defense motions, that are potentially</p> <p>2 dispositive that ought to be managed as well</p> <p>3 because if those are -- if those motions are</p> <p>4 granted, the case is ended. So those kinds of --</p> <p>5 but then again, I have to ask you, Mr. Stern,</p> <p>6 whether you're seeking a jury with the plea in bar</p> <p>7 and that kind of thing, which may change the</p> <p>8 scheduling of it.</p> <p>9 But initially my reaction to it is I think</p> <p>10 we have to get some of these defense motions</p> <p>11 heard. And especially Ms. Harris's motion, it</p> <p>12 seems to me. Maybe we can start if you all don't</p> <p>13 mind. Because I know that there was some kind of</p> <p>14 an agreement in here that Ms. Harris's motion</p> <p>15 should be set on January 29th, and it wasn't set</p> <p>16 on January 29th, it was kicked over to this date</p> <p>17 bundled with everything else.</p> <p>18 And it strikes me that's hanging out there</p> <p>19 by itself and can be resolved by setting a date</p> <p>20 today. So unless there's a reason I shouldn't</p> <p>21 hear that first, I kind of like to get to that</p> <p>22 first.</p> | 11 |
| 10 | <p>1 jurisdiction?</p> <p>2 MS. HARRIS: I expect needing three hours</p> <p>3 for an evidentiary hearing, Your Honor.</p> <p>4 THE COURT: Okay. So it's evidentiary.</p> <p>5 And, Mr. McDonald, how -- do you think three hours</p> <p>6 is an accurate time estimate?</p> <p>7 MR. McDONALD: I do. I don't think we</p> <p>8 need more than three hours.</p> <p>9 THE COURT: All right. A bench trial,</p> <p>10 three hours, and I'm going to start look at my</p> <p>11 calendar. Okay? And we're going to get this</p> <p>12 docketed right now.</p> <p>13 MS. HARRIS: Thank you, Your Honor. We've</p> <p>14 just been trying to do that for a number of</p> <p>15 months.</p> <p>16 THE COURT: Sure. I heard that, and we're</p> <p>17 going to take care of that today. What month were</p> <p>18 you thinking of, folks?</p> <p>19 MS. HARRIS: What is the Court's earliest</p> <p>20 available date for a three-hour hearing?</p> <p>21 THE COURT: Let me look for you.</p> <p>22 April 5th.</p> | 12 |

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4 (13 to 16)

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| 13 | <p>1 be happy to do the week of April 12th. That would</p> <p>2 be fine with me.</p> <p>3 THE COURT: Let me see if I can find</p> <p>4 something for you all. It's going to be a</p> <p>5 squeeze, but we can shoot for April 12th. And</p> <p>6 then Ms. Harris, you mentioned a briefing</p> <p>7 schedule?</p> <p>8 MS. HARRIS: Yeah. Your Honor, looking at</p> <p>9 it, if we did April 12th and had a reply brief on</p> <p>10 the 5th, their opposition on the 29th, that means</p> <p>11 our brief is due next -- on the 22nd. So</p> <p>12 actually, that's fine.</p> <p>13 THE COURT: Okay. You asked for the</p> <p>14 earliest date, and that's the earliest date,</p> <p>15 apparently. So you want to have your brief filed</p> <p>16 on 3/22/21 close of business, right, and then the</p> <p>17 opposition brief is due when?</p> <p>18 MS. HARRIS: With the opposition due on</p> <p>19 the 29th and reply on the 5th.</p> <p>20 THE COURT: Okay. 4/5. Is everyone in</p> <p>21 agreement with that briefing schedule?</p> <p>22 MR. LAWRENCE: Your Honor, this is an</p> | 15 |
| 14 | <p>1 evidentiary motion with respect to the discovery</p> <p>2 you granted, so I would suggest more than a week</p> <p>3 would be appropriate between the motion being</p> <p>4 filed and the opposition just given the amount of</p> <p>5 work.</p> <p>6 THE COURT: The brief is going to be on</p> <p>7 legal matters, it's not going to be evidentiary.</p> <p>8 The Court is going to make factual findings of its</p> <p>9 own; right?</p> <p>10 MR. LAWRENCE: Your Honor, you granted</p> <p>11 discovery as to personal jurisdiction. It will be</p> <p>12 factual in terms of -- I assume they're going to</p> <p>13 use the discovery we put forth.</p> <p>14 THE COURT: I know, but what is the point</p> <p>15 you're trying to making about the one week</p> <p>16 response?</p> <p>17 MR. LAWRENCE: Just that it would be -- to</p> <p>18 have five days is -- I would just suggest to Your</p> <p>19 Honor that the opposition -- I'm sorry, the motion</p> <p>20 be filed maybe ten days before instead of on the</p> <p>21 22nd, maybe move it back?</p> <p>22 THE COURT: Today is the 11th; right? And</p> | 16 |
| | <p>1 you want them to file it in a week?</p> <p>2 MR. LAWRENCE: It's actually --</p> <p>3 THE COURT: Is that what you're saying,</p> <p>4 the 18th?</p> <p>5 MR. LAWRENCE: Yes, Your Honor.</p> <p>6 THE COURT: Ms. Harris, can you do it by</p> <p>7 the 18th?</p> <p>8 MS. HARRIS: How about the 19th? And that</p> <p>9 gives them the weekend with it.</p> <p>10 MR. LAWRENCE: That's fine.</p> <p>11 THE COURT: Okay. 19th, 29th, 5th; right?</p> <p>12 MS. HARRIS: Yes. Your Honor, as far as</p> <p>13 pages, could we have 25 pages for opening and 5</p> <p>14 for reply?</p> <p>15 THE COURT: What are you all putting in</p> <p>16 these briefs? Factual stuff?</p> <p>17 MS. HARRIS: Ours is primarily legal</p> <p>18 argument, as Your Honor --</p> <p>19 THE COURT: I don't need 25 pages.</p> <p>20 MS. HARRIS: Well, legal arguments to</p> <p>21 flesh out the facts of the case and why even under</p> <p>22 their allegations there's no personal</p> | |

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5 (17 to 20)

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| <p style="text-align: right;">17</p> <p>1 that's resolved, okay?</p> <p>2 MS. HARRIS: Thank you. And is that at</p> <p>3 10:00 a.m., Your Honor?</p> <p>4 THE COURT: Yes, ma'am.</p> <p>5 MS. HARRIS: Okay.</p> <p>6 THE COURT: Okay. So we'll have a</p> <p>7 separate order just for that one if we can. So</p> <p>8 let me look at the list of motions here and decide</p> <p>9 which one I think I'll do next.</p> <p>10 I would like to hear the eighth motion in</p> <p>11 this list of motions, which is plaintiff's motion</p> <p>12 to quash or modify defendant Compass Marketing's</p> <p>13 attorney issued subpoena duces tecum or for entry</p> <p>14 of a protective order, okay? So this comes on</p> <p>15 plaintiff's motion, Mr. McDonald.</p> <p>16 MR. McDONALD: Your Honor, yes.</p> <p>17 Mr. Lawrence will be arguing that.</p> <p>18 THE COURT: All right. Mr. Lawrence.</p> <p>19 MR. LAWRENCE: Thank you. The reason we</p> <p>20 filed the motion to quash and subpoena, they're</p> <p>21 seeking personal banking information regarding</p> <p>22 plaintiffs Michael and Daniel White (inaudible.)</p> | <p style="text-align: right;">19</p> <p>1 fishing expedition meant to annoy, harass, and</p> <p>2 impede the progress of this case.</p> <p>3 THE COURT: All right. Mr. Stern.</p> <p>4 MR. STERN: Your Honor, there's a couple</p> <p>5 of arguments as to why this motion is without</p> <p>6 merit. First, it's untimely. They are required</p> <p>7 to file the motion promptly. The subpoena was</p> <p>8 served on them on January 12th. The subpoena</p> <p>9 required response by January 27th. There was a</p> <p>10 preliminary response and M&T Bank did ask for an</p> <p>11 extension of time to respond to this other</p> <p>12 information, of course wanting to give them</p> <p>13 professional courtesies, we gave that courtesy.</p> <p>14 And then on February 3rd is when the</p> <p>15 motion to quash was filed. If we had held M&T</p> <p>16 Bank to a strict compliance date, this motion</p> <p>17 would never even been filed. So plaintiff should</p> <p>18 not get the benefit of that. Beyond that, the</p> <p>19 merits of the argument are pretty clear. They're</p> <p>20 saying this is some fishing expedition and we</p> <p>21 haven't filed counterclaims yet. Of course we</p> <p>22 haven't filed counterclaims yet because we're not</p> |
| <p style="text-align: right;">18</p> <p>1 THE COURT: I'm sorry, Mr. Lawrence,</p> <p>2 you're breaking up.</p> <p>3 MR. LAWRENCE: I apologize for the</p> <p>4 technical difficulties. I tried to game this</p> <p>5 beforehand to make sure the technology works.</p> <p>6 I'll try to speak loudly. Just let me know if you</p> <p>7 can't hear me or anybody else on the phone can't.</p> <p>8 We filed this motion to quash because the</p> <p>9 defendant -- the defendant Compass is seeking</p> <p>10 personal financial information and banking</p> <p>11 information concerning the plaintiffs, which have</p> <p>12 no bearing on the allegations in the complaint, no</p> <p>13 bearing on the pending motions that Your Honor</p> <p>14 limited discovery to. That's pure and simple the</p> <p>15 argument.</p> <p>16 The response back to us is that there</p> <p>17 somehow may be relevant information and it may be</p> <p>18 relevant to some allegations that are being made</p> <p>19 in the discovery disputes. The issue with that,</p> <p>20 though, is that Compass has not filed any</p> <p>21 counterclaims against my client, so these are not</p> <p>22 live issues. And so it's a pure and simple</p> | <p style="text-align: right;">20</p> <p>1 subject to the jurisdiction of this Court, we</p> <p>2 don't want to waive that argument. But part of</p> <p>3 the defenses to the claims that are being made,</p> <p>4 and part of defenses to the motions that are at</p> <p>5 issue, which is Court ordered discovery on the</p> <p>6 pending motions, one of which is a motion to</p> <p>7 appoint a custodian.</p> <p>8 Well, plaintiff are claiming that this</p> <p>9 company is being mismanaged. Part of the</p> <p>10 relevance to that defense is the money that</p> <p>11 they've stolen. We've put evidence before this</p> <p>12 Court of the bank accounts they've opened in</p> <p>13 Compass Marketing's name. We've put before this</p> <p>14 evidence that there's a secret account at</p> <p>15 Community First Bank where it is essentially in</p> <p>16 Compass Marketing, but the address that was used</p> <p>17 on that account, as we've shown on the document,</p> <p>18 bank card, the signature card that was submitted</p> <p>19 to the Court was actually Michael White's home</p> <p>20 address.</p> <p>21 And to even get those documents, we</p> <p>22 couldn't get them. We had to subpoena those</p> |

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6 (21 to 24)

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| 21 | <p>1 records. How is that's a proper Compass Marketing</p> <p>2 account if we had to subpoena those records? That</p> <p>3 shows they're taking money and hiding them. We</p> <p>4 also showed the checks that they were writing to</p> <p>5 themselves from that account going into their</p> <p>6 personal bank accounts.</p> <p>7 Furthermore, amongst other things, we've</p> <p>8 added -- there's this \$65,000 check signed by</p> <p>9 Michael White, payable to Daniel White with the</p> <p>10 notation on it, final payments to James DePaul and</p> <p>11 former employees. Why is that not coming from the</p> <p>12 operating account of Compass Marketing? Two</p> <p>13 months earlier there was a \$10,000 check made to</p> <p>14 Chick DePaula again drawn on Dan White's account,</p> <p>15 not from a Compass Marketing account.</p> <p>16 You have to ask yourself, why would that</p> <p>17 be the case? If these are legitimate, they should</p> <p>18 be all coming to Compass Marketing's operating</p> <p>19 account. At a minimum, at the very at least it</p> <p>20 suggests that Daniel White was keeping some of</p> <p>21 that money even if it was a legitimate business,</p> <p>22 which it's not. And most of the money from that</p> | 23 | <p>1 show this claim is without merit.</p> <p>2 THE COURT: Okay. Anything in rebuttal,</p> <p>3 Mr. Lawrence? And then I will make a decision.</p> <p>4 MR. LAWRENCE: Yes, Your Honor.</p> <p>5 Everything about -- are allegations relating to</p> <p>6 the historical facts. They're all out of context.</p> <p>7 And we would dispute them, Your Honor, but they</p> <p>8 have nothing to do with the pending motions, which</p> <p>9 is whether a custodian pendente lite should be</p> <p>10 appointed for ongoing considerations.</p> <p>11 Mr. Stern is pointing to no information</p> <p>12 showing that my clients are in control of this</p> <p>13 company or in control of bank accounts or that</p> <p>14 there's some risk of ongoing harm to the company,</p> <p>15 which is the entire issue noted in the pendente</p> <p>16 lite. Instead what he's doing is he's trying to</p> <p>17 bring a counterclaim through discovery, and it's</p> <p>18 not appropriate, Your Honor.</p> <p>19 And it shows where this case is spiraling</p> <p>20 out of control, and it's a consistent theme as we</p> <p>21 go through the discovery where it's really just</p> <p>22 sabotage type discovery and it's not actually</p> |
| 22 | <p>1 secret account was being deposited to Michael</p> <p>2 White's personal account.</p> <p>3 We've put forth plenty of evidence on</p> <p>4 that, plus we've also shown the wives taking money</p> <p>5 from this company even though they've never worked</p> <p>6 there. There's also these loans, supposed loans,</p> <p>7 and you can see the notations on some of the</p> <p>8 checks, some of them, but not all of them, some of</p> <p>9 the checks, I think it was an LTC loan from</p> <p>10 Compass, what they wrote on it.</p> <p>11 Well, if it was a legitimate loan, which</p> <p>12 Compass contents it's not, we should be seeing a</p> <p>13 flow of money that's -- if it's a legitimate loan</p> <p>14 from their personal accounts into Compass</p> <p>15 Marketing's account. They don't exist. And</p> <p>16 where's the money going? We have to be able to</p> <p>17 see where the money is going.</p> <p>18 These plaintiffs are asking this Court to</p> <p>19 dissolve this company, and Compass Marketing has</p> <p>20 said that they're stealing one from the company.</p> <p>21 We are entitled to get discovery to know where the</p> <p>22 money is going and what they've taken from it to</p> | 24 | <p>1 getting to the heart of the matters to move this</p> <p>2 case forward. The M&T subpoena is specifically</p> <p>3 designed just to get personal information</p> <p>4 regarding our clients that have nothing to do with</p> <p>5 the live allegations in this complaint, nothing to</p> <p>6 do with the pending motion, and again,</p> <p>7 particularly nothing to do with the custodian</p> <p>8 pendente lite, which is what he's trying to point</p> <p>9 to.</p> <p>10 MR. STERN: Your Honor --</p> <p>11 THE COURT: As we all know, these matters</p> <p>12 can become very intertwined, and whether somebody</p> <p>13 is trying to assert a defense or explain their</p> <p>14 position and they end up in a counterclaim or not,</p> <p>15 it's still relevant to the question of what's</p> <p>16 actually happening.</p> <p>17 Seeking a custodian for the business is a</p> <p>18 finding essentially that the business is not</p> <p>19 thriving or not doing -- operating quickly. Those</p> <p>20 are strong allegations. I read the complaint.</p> <p>21 These are strong allegations. They have a very,</p> <p>22 very different view of that. So at this point the</p> |

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7 (25 to 28)

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| 25 | <p>1 only thing I would say is that if they're having</p> <p>2 to get materials that from their point of view are</p> <p>3 legitimate Compass Marketing business and they</p> <p>4 have to get it through this method, it strikes me</p> <p>5 that, again, this goes back to the other issues</p> <p>6 you all are arguing about, there's not been a free</p> <p>7 flow of information in discovery. So that needs</p> <p>8 to be done.</p> <p>9 And my view on discovery -- and I think</p> <p>10 you'll be hearing this probably throughout -- the</p> <p>11 more you share, even with appropriate protections</p> <p>12 so it's not disseminated widely and</p> <p>13 inappropriately, is the best way for everyone to</p> <p>14 see what the other side is saying and then draw</p> <p>15 whatever conclusions you think you need to from</p> <p>16 those disclosures. And this is another one of</p> <p>17 those.</p> <p>18 I don't think this is a mere fishing</p> <p>19 expedition. I've heard enough from Mr. Stern to</p> <p>20 conclude that it is related, sufficiently related</p> <p>21 to allow them to view it and to use it as they</p> <p>22 wish in this case. The allegations are coming,</p> | 27 | <p>1 include that.</p> <p>2 I think I'd like to have you all discuss</p> <p>3 with me motions for expedited hearings, okay?</p> <p>4 Really this is more of a scheduling motion than</p> <p>5 merely whether it's expedited. And there are a</p> <p>6 number of motions -- and I just want to make sure</p> <p>7 I have this straight. This is my motion three.</p> <p>8 The request here is to speedily docket the</p> <p>9 plaintiff's motion to -- custodian pendente lite,</p> <p>10 the plaintiff's motion to disqualify counsel,</p> <p>11 defendant Compass's motion to dismiss, and</p> <p>12 defendant Compass's plea in bar; right? Those are</p> <p>13 the four motions that are in plaintiff's motion;</p> <p>14 right?</p> <p>15 MR. McDONALD: Your Honor, Patrick</p> <p>16 McDonald here for plaintiffs. I think the motions</p> <p>17 we were seeking to expedite are the plaintiffs</p> <p>18 motions, and I think this goes back to the</p> <p>19 procedural history of the case going all the way</p> <p>20 back to Judge Fiore's order from</p> <p>21 September 29th, 2020.</p> <p>22 At that time we were before the Court, I</p> |
| 26 | <p>1 and they're very powerful allegations. So they're</p> <p>2 entitled to defend against that. And if these</p> <p>3 materials bear on that, which I think they</p> <p>4 potentially could -- because remember, discovery</p> <p>5 is not necessarily only admissible information,</p> <p>6 discovery is allowed for relevant materials or</p> <p>7 that might lead to admissible information. And so</p> <p>8 that's -- you know, it's further removed from</p> <p>9 straight admissibility in court.</p> <p>10 And so my ruling today is that the motion</p> <p>11 to quash would be denied, and that -- and then I'm</p> <p>12 going to put a pin in the protective order because</p> <p>13 I think we're going to come to some discussion</p> <p>14 about protecting certain information that may</p> <p>15 touch upon this. So I'm going to hold that</p> <p>16 holding in advance. And I think I'd like to wrap</p> <p>17 it all into one ruling on the protective order.</p> <p>18 But at this point the motion to quash is</p> <p>19 denied. So Mr. Stern can draft an order denying</p> <p>20 the motion to quash with obviously Mr. Lawrence's</p> <p>21 exception noted. And then once I rule on the</p> <p>22 protective order piece on that, then we can</p> | 28 | <p>1 think Mr. McEvoy was present for that hearing, and</p> <p>2 there was an argument over which motions should go</p> <p>3 first, and Judge Fiore's order says basically,</p> <p>4 well, you guys pick dates, and the presiding judge</p> <p>5 will hear -- tell you what order those motions are</p> <p>6 going to go in on those dates; right? Kind of</p> <p>7 pick two days or three days together, and then the</p> <p>8 presiding judge will decide the order. So that's</p> <p>9 kind of how it went.</p> <p>10 And meanwhile, that was in September.</p> <p>11 Meanwhile we're trying -- discovery starts, it's</p> <p>12 related to these pending motions, and discovery</p> <p>13 totally bogs down. And what ends up happening,</p> <p>14 all the while this pendente lite relief and this</p> <p>15 motion to disqualify, which are important</p> <p>16 preliminary issues to protect the company and to</p> <p>17 ensure this matter is being heard in the proper</p> <p>18 fashion are just lingering and lingering.</p> <p>19 Meanwhile, and we've been -- I believe</p> <p>20 there's an email attached to our motion which says</p> <p>21 in December we're saying, hey, let's get dates for</p> <p>22 all this. And in response we get no dates from</p> |

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8 (29 to 32)

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| 29 | <p>1 anyone, in particularly Compass's counsel. What</p> <p>2 we get is conversation about anything else other</p> <p>3 than setting --</p> <p>4 THE COURT: Hang on a minute. I read all</p> <p>5 that. We're here to pick dates; right?</p> <p>6 MR. McDONALD: I agree, and we're here to</p> <p>7 pick dates.</p> <p>8 THE COURT: That's what we're here to do.</p> <p>9 So I understand you've had your difficulties, all</p> <p>10 right, but -- and I'm not entirely clear how</p> <p>11 things were expressed in that hearing in</p> <p>12 September, but I will make it clear to you that</p> <p>13 we're going to schedule things that need to be</p> <p>14 scheduled, and we'll do it today, just like we</p> <p>15 took care of Ms. Harris's motion, we'll take care</p> <p>16 of this. Okay?</p> <p>17 But I see these dispositive motions to be</p> <p>18 important to handle as well, because obviously the</p> <p>19 more we can -- normally what happens in these</p> <p>20 cases, okay, is you get a demurrer, the demurrer</p> <p>21 and plea in bar and we knock those out, and then</p> <p>22 we can move on or not. The case maybe ended;</p> | 31 | <p>1 to know from you all whether there's a jury</p> <p>2 demand, because that will make a difference. And</p> <p>3 of course I need to know on each of these motions</p> <p>4 what you all think the duration of each of these</p> <p>5 is going to be.</p> <p>6 So having said, the plea in bar is my</p> <p>7 first question, because I think that does matter</p> <p>8 whether we can schedule it sooner or later with a</p> <p>9 jury or not.</p> <p>10 MR. STERN: Your Honor, can I first</p> <p>11 address the motion to dismiss? Because I think</p> <p>12 that would need to come before the plea in bar.</p> <p>13 THE COURT: Maybe, but I also want an</p> <p>14 answer to the question about the plea in bar.</p> <p>15 MR. STERN: We're happy to go with a bench</p> <p>16 trial. It's a statute of limitations defense is</p> <p>17 what that is.</p> <p>18 THE COURT: Okay. But as I read the</p> <p>19 complaint, what was alleged was that there was so</p> <p>20 much fraudulent conduct that it was basically</p> <p>21 obfuscated and screened discovery of the behavior</p> <p>22 so far down the road, and it was specifically</p> |
| 30 | <p>1 right? So it's important to get some of these</p> <p>2 preliminary matters squared away.</p> <p>3 Asking the Court to schedule -- I</p> <p>4 understand, you know, this case was filed</p> <p>5 originally in 2019, certain motions were granted</p> <p>6 necessitating an amendment, right? The amendment</p> <p>7 was filed, and then there was service after that,</p> <p>8 a period of time after that, and the responsive</p> <p>9 pleadings came in. Pleas in bar, motions to</p> <p>10 dismiss, personal jurisdiction complaints.</p> <p>11 So yes, we do need to have discovery</p> <p>12 moving forward, it can be on parallel tracks. I</p> <p>13 realize this has caused a lot of drama for you</p> <p>14 all, I get it, but it seems like we have to get</p> <p>15 these dispositive motions clarified now and get</p> <p>16 those them worked out.</p> <p>17 So what I need to understand at least</p> <p>18 preliminarily before we jump into what's being</p> <p>19 scheduled when, is there going to be a jury demand</p> <p>20 for the plea in bar? Because I didn't read the</p> <p>21 plea in bar, I had plenty of other things to read,</p> <p>22 so I don't know what the issue is, and so I want</p> | 32 | <p>1 addressed in the complaint. So there's going to</p> <p>2 be a lot of evidence on that issue, obviously,</p> <p>3 what did you know? When did you know it? And so</p> <p>4 on. So there's going to be a factual</p> <p>5 determination, presumably. So Mr. McDonald or</p> <p>6 Mr. Lawrence, is there a demand for a jury on the</p> <p>7 plaintiff's side?</p> <p>8 MR. LAWRENCE: Your Honor, plaintiffs have</p> <p>9 not filed a demand for a jury now. Procedurally</p> <p>10 they have that option up to the point of the</p> <p>11 hearing is my understanding, Your Honor. I have</p> <p>12 to speak to Mr. McDonald regarding --</p> <p>13 THE COURT: Well, there's no demand now,</p> <p>14 so how do I schedule it?</p> <p>15 MR. LAWRENCE: Understood, Your Honor.</p> <p>16 I'm just saying that I haven't forced my clients</p> <p>17 to make that decision now because of the knowledge</p> <p>18 of the procedure. My inclination is we go ahead</p> <p>19 and schedule it nonetheless as if it was not a</p> <p>20 jury trial, and we would inform the Court as soon</p> <p>21 as possible if that's not the case.</p> <p>22 THE COURT: Okay. And the motion to</p> |

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9 (33 to 36)

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| 33 | <p>1 dismiss, what's the duration of that, do you</p> <p>2 think?</p> <p>3 MR. STERN: Evidentiary hearing. It's a</p> <p>4 straight legal argument. It's based on a lack of</p> <p>5 jurisdiction, failure to name a necessary party</p> <p>6 and forum non conveniens. And so that -- our</p> <p>7 position all along is that should be heard shortly</p> <p>8 after John White's motion is -- on personal</p> <p>9 jurisdiction is heard. I think the most</p> <p>10 appropriate thing would be for that to be</p> <p>11 scheduled approximately a week, somewhere shortly</p> <p>12 thereafter so that that can be heard. That might</p> <p>13 be dispositive of the entirety of the case, which</p> <p>14 we --</p> <p>15 THE COURT: And so how much time do you</p> <p>16 think that would require? An hour?</p> <p>17 MR. STERN: Probably an hour would</p> <p>18 probably be sufficient to make.</p> <p>19 THE COURT: As long as there's no</p> <p>20 testimony.</p> <p>21 MR. McDONALD: Judge, I think we disagree</p> <p>22 that that's not an evidentiary hearing, because</p> | 35 | <p>1 how in the world you can't get something on the</p> <p>2 docket to have -- I just don't understand it, but</p> <p>3 okay. It seems like there's been a lot of</p> <p>4 hurdles. So we're going to do it. So that needs</p> <p>5 to be heard. And how long is the motion for a</p> <p>6 custodian pendente lite going to take?</p> <p>7 MR. STERN: Your Honor, we have to go</p> <p>8 through all the discovery to be able to get</p> <p>9 something like that -- we've gotten zero. It's</p> <p>10 been four months -- more than four months.</p> <p>11 THE COURT: Okay. So it's an evidentiary</p> <p>12 issue. Discovery needs to be -- you have to have</p> <p>13 a discovery cutoff, because there needs to be --</p> <p>14 so you need a trial date for that hearing so you</p> <p>15 have discovery cutoff dates. I mean, at this</p> <p>16 point, you know, we're working -- normally</p> <p>17 scheduling orders work off of actual trial dates.</p> <p>18 You're doing interim discovery with interim</p> <p>19 discovery cutoffs, essentially, because of</p> <p>20 preliminarily substantive motions. I hope I'm</p> <p>21 fairly characterizing this for you all so you all</p> <p>22 know -- and I don't have an end date from which to</p> |
| 34 | <p>1 forum non conveniens is essentially, it's a</p> <p>2 factual venue jurisdictional type of argument.</p> <p>3 And I don't think we agree that there's going to</p> <p>4 be no evidence in that case. I don't think it's</p> <p>5 pure legal argument.</p> <p>6 And I would go back to Judge Fiore's order</p> <p>7 of basically we're going to hear all these things</p> <p>8 at once. You know, and the presiding judge will</p> <p>9 set the order of when that's going to be. I hear</p> <p>10 you say you want to schedule -- you kind of agree</p> <p>11 with that in a way, which is you want to put these</p> <p>12 other ones there. And so what I would say, Your</p> <p>13 Honor, is I think this is going to be an</p> <p>14 evidentiary matter the same as the others. So I</p> <p>15 don't know that there's a reason to prioritize</p> <p>16 it --</p> <p>17 MR. STERN: Your Honor --</p> <p>18 MR. McDONALD: -- that's pure legal</p> <p>19 argument.</p> <p>20 THE COURT: We can schedule it. I'm going</p> <p>21 to decide which ones go in what order now because</p> <p>22 ya'll can't seem to do it. I mean, I don't know</p> | 36 | <p>1 calculate back discovery cutoffs. So you need a</p> <p>2 discovery cutoff.</p> <p>3 MR. McDONALD: That's a correct</p> <p>4 characterization. The problem is we're four and a</p> <p>5 half months in since our discovery requests have</p> <p>6 been served and we've gotten zero.</p> <p>7 THE COURT: Right. I understand,</p> <p>8 Mr. Stern, because --</p> <p>9 MR. McDONALD: Your Honor, if I could --</p> <p>10 THE COURT: Stop. Stop. I asked one</p> <p>11 question. How long will the trial on the</p> <p>12 custodian pendente lite take to try? That was my</p> <p>13 question.</p> <p>14 MR. McDONALD: Your Honor, I think we</p> <p>15 probably need about a day for that.</p> <p>16 THE COURT: One day. Mr. Stern, you're</p> <p>17 saying I don't know, probably, because you haven't</p> <p>18 gotten all the discovery?</p> <p>19 MR. STERN: We have no idea how many</p> <p>20 witnesses -- that's the thing, if you saw in the</p> <p>21 emails we submitted, I even tried to talk to --</p> <p>22 THE COURT: Okay. Mr. Stern, contain</p> |

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10 (37 to 40)

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| 37 | <p>1 yourself, please. I think it's two days. Because</p> <p>2 this is the heart of the case, isn't it?</p> <p>3 MR. STERN: It is.</p> <p>4 MR. McDONALD: It is.</p> <p>5 THE COURT: It's basically saying they</p> <p>6 have so badly handled this we need a custodian or</p> <p>7 a receiver to fix it, to manage it. So that goes</p> <p>8 to the heart of it. So that's not going to be our</p> <p>9 first motion, because it's basically got to happen</p> <p>10 after further discovery, which we will figure out</p> <p>11 in a few minutes. Then the fourth motion is the</p> <p>12 other plaintiff's motion to disqualify counsel.</p> <p>13 And -- and please refresh my memory on this, what</p> <p>14 counsel needs to be disqualified?</p> <p>15 MR. McDONALD: Your Honor, we're moving to</p> <p>16 disqualify Mr. Stern. And we don't do that</p> <p>17 lightly, but he is a material witnesses, he and</p> <p>18 his firm are material witnesses that are</p> <p>19 intimately involved with Compass. And that --</p> <p>20 that motion sort of -- it informs I think a lot of</p> <p>21 other motions and whether Mr. Stern should be</p> <p>22 making any of these arguments.</p> | 39 | <p>1 if we're going to combine these into one three or</p> <p>2 four-day event and hear them in the order I'm</p> <p>3 suggesting, okay?</p> <p>4 But I think that at least the dismissal,</p> <p>5 the disqualification, and the plea in bar should</p> <p>6 be heard sooner than the custodian. And I say</p> <p>7 that because, again, as I already said having --</p> <p>8 if these dismissals or if these dispositive</p> <p>9 motions, excuse me, are granted, again, the whole</p> <p>10 predicate of the pendente lite custodian rests on</p> <p>11 the case being allot, so hence pendente lite.</p> <p>12 So we have to know whether or not this</p> <p>13 case is going forward, so the dispositive motions</p> <p>14 need to be heard. So that's my view of it. And</p> <p>15 because we're talking about two, maybe all three</p> <p>16 being evidentiary, and I imagine there being</p> <p>17 overlapping information, it seems to me we should</p> <p>18 combine this in a multiday hearing and hear it in</p> <p>19 the order I suggested. It may be that all the</p> <p>20 matters are simply -- you dump all your evidence</p> <p>21 in and have the Court make whatever decisions it's</p> <p>22 going to make on those three motions, but it needs</p> |
| 38 | <p>1 THE COURT: Okay. So how long will that</p> <p>2 -- that's going to be obviously an evidentiary</p> <p>3 hearing?</p> <p>4 MR. McDONALD: Yes, Your Honor. I think</p> <p>5 that one will be no more than three hours.</p> <p>6 THE COURT: You've got two and a half</p> <p>7 hours for non-evidentiary motions today, you</p> <p>8 realize that, so I'd be certain of that estimate,</p> <p>9 but I would say a day.</p> <p>10 MR. McDONALD: I hear what you're saying,</p> <p>11 Your Honor.</p> <p>12 THE COURT: I think it's a day. You're</p> <p>13 looking at presenting testimony from a number of</p> <p>14 people who are going to say, you know, whatever it</p> <p>15 is you think they're going to say, and then</p> <p>16 Mr. Stern and his firm and Compass will obviously</p> <p>17 have a different opinion, otherwise we wouldn't be</p> <p>18 arguing over this. So my view of this is that the</p> <p>19 motion to dismiss and the disqualification are the</p> <p>20 first two motions in order. I'm not telling you</p> <p>21 when -- you know, how much time in between these</p> <p>22 things or if they will be on separate days even or</p> | 40 | <p>1 to be set out so you have time to get your</p> <p>2 witnesses, then the custodian pendente lite should</p> <p>3 be scheduled, I suggest, shortly thereafter. And</p> <p>4 then you can all can work backwards from those</p> <p>5 dates and get your discovery cutoffs, we can do an</p> <p>6 interim scheduling order for you which picks dates</p> <p>7 for you to pick back from.</p> <p>8 MR. STERN: Your Honor --</p> <p>9 THE COURT: I don't know how else to say</p> <p>10 it, but that seems to be the logical way to do it.</p> <p>11 MR. STERN: Your Honor, if I may, I think</p> <p>12 the motion to dismiss should be heard earlier</p> <p>13 because it's a legal argument. The only potential</p> <p>14 evidentiary situation, which I don't think is an</p> <p>15 evidentiary one, but if they want to make it one I</p> <p>16 understand that is identifying where the witnesses</p> <p>17 are. That's not going to take discovery -- people</p> <p>18 know -- we don't know which witnesses are going to</p> <p>19 be called in for the evidentiary hearings, but</p> <p>20 where all the evidence is in this case is part of</p> <p>21 the forum non conveniens. That's all -- those are</p> <p>22 the two arguments, necessary party, forum non</p> |

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11 (41 to 44)

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| 41 | <p>1 conveniens.</p> <p>2 And if that motion is granted, that gets</p> <p>3 you rid of the need for all these other motions</p> <p>4 all this over discovery, that should heard first.</p> <p>5 I would agree with and I'm fine with if the Court</p> <p>6 wants to order that the plea in bar and motion to</p> <p>7 disqualify are heard together, that's fine, I</p> <p>8 didn't know there's going to be different</p> <p>9 evidentiary issues, but I'm trying to find a path</p> <p>10 where there's some -- some semblance of organized</p> <p>11 structure and the parties not spending a lot of</p> <p>12 money that they don't need to spend.</p> <p>13 MR. McDONALD: Judge, I don't see how we</p> <p>14 can have a hearing on the motion to dismiss</p> <p>15 without at least at the same time deciding if</p> <p>16 Mr. Stern should even be making these arguments,</p> <p>17 because it is conflicting.</p> <p>18 MR. STERN: Your Honor, I'm just -- I'm</p> <p>19 getting tired of this dirt being thrown. That</p> <p>20 motion is so weak they couldn't get discovery from</p> <p>21 a court in Maryland because they couldn't even</p> <p>22 make out the bare minimum that's required to get</p> | 43 | <p>1 And then the plea in bar we'll set a</p> <p>2 second hearing on a separate day for a day. And</p> <p>3 then the custodian pendente lite will be further</p> <p>4 out set for two days. And the reason I say</p> <p>5 further out, meaning third a row, I don't mean</p> <p>6 seven months from now, but several -- the third</p> <p>7 one of three hearings that we're going to have for</p> <p>8 you all so that, A, you'll get all the discovery</p> <p>9 done; B, you will have the time; and C, because I</p> <p>10 think this is the proper order of things.</p> <p>11 So this should work, but -- and we'll have</p> <p>12 to pick three trial dates for you all on that. So</p> <p>13 before I choose those dates or we choose those</p> <p>14 dates, I want to move on to -- I think now we're</p> <p>15 into pretty much the discovery matters. And I</p> <p>16 think we can probably handle them all -- because</p> <p>17 they're all sort of versions of the same argument.</p> <p>18 The motion to compel, the plaintiff's motion to</p> <p>19 compel for a protective order, which is</p> <p>20 essentially a motion to adopt the plaintiff's</p> <p>21 language of a protective order, right, and then</p> <p>22 defendant's cross-motion for a protective order,</p> |
| 42 | <p>1 discovery. That's how much -- it's all part of</p> <p>2 their part and parcel, their strategy to distract</p> <p>3 from the other my conduct and throw dirt on the</p> <p>4 law.</p> <p>5 THE COURT: Let's do this. All right. So</p> <p>6 maybe this will help with the other things that</p> <p>7 we've been talking -- what I'm having difficulty</p> <p>8 with -- let me stop there. What I'm having</p> <p>9 difficulty with on these discovery motions is that</p> <p>10 all discovery -- discovery has been propounded and</p> <p>11 there are complaints that no one's getting what</p> <p>12 they're asking for timely and there's all these</p> <p>13 impediments and this and that. Okay.</p> <p>14 We're going to resolve some of that today</p> <p>15 and get the ball rolling. This has been</p> <p>16 outstanding for months, the discovery. So it</p> <p>17 strikes me that we should be able to schedule the</p> <p>18 dismissal, motion to dismiss, and the</p> <p>19 disqualification for one day on the same day and</p> <p>20 you won't need to have much additional discovery</p> <p>21 after today. I think everything is going to be</p> <p>22 cleared out by then.</p> | 44 | <p>1 which is essentially the opposite, please take</p> <p>2 this view of a protective order. That's basically</p> <p>3 one issue. Plaintiff's motion for a protective</p> <p>4 order and discovery plan. Defendants cross-motion</p> <p>5 to compel discovery, and plaintiff's second motion</p> <p>6 to enlarge time for discovery responses.</p> <p>7 So they're all discovery. And there are</p> <p>8 multiple concerns about protective orders. So the</p> <p>9 protective order seems to be the hurdle, at least</p> <p>10 one of them. And I think now it's before the</p> <p>11 Court. So let's start with the protective order</p> <p>12 issue. So there was a request during this</p> <p>13 discovery period or insistence, however you want</p> <p>14 to phrase it, that you all enter into a protective</p> <p>15 order regarding certain confidential information.</p> <p>16 The plaintiffs are of the opinion that the</p> <p>17 language, which involves some liquidated damages</p> <p>18 provisions, and another enhanced -- enhancement to</p> <p>19 the protective order, which is somewhat disputed</p> <p>20 as to whether it's an attorneys' eyes only</p> <p>21 protective order or an enhancement that comes</p> <p>22 before the Court, which is kind of the way I read</p> |

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12 (45 to 48)

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| 45 | <p>1 it, and whether that's necessary; right?</p> <p>2 So when you think about this, at least</p> <p>3 from my view of the briefs that I read, both of</p> <p>4 you are claiming pretty significant problems with</p> <p>5 the way this company was run or the way certain</p> <p>6 individuals conducted themselves vis-à-vis Compass</p> <p>7 Marketing and whether they were using it as their</p> <p>8 own personal slush fund or they were</p> <p>9 misappropriating funds and acquiring interest in</p> <p>10 another company and basically disassembling</p> <p>11 Compass improperly. Two very serious views of the</p> <p>12 same condition of the company.</p> <p>13 So obviously each of you has concern about</p> <p>14 where that information is going to go. And so</p> <p>15 protective order sometimes obviously is necessary,</p> <p>16 and neither of you seems to dispute that. So the</p> <p>17 question is why is one better than the other and</p> <p>18 what does one accomplish the other one doesn't,</p> <p>19 and what is the most safe possible way to protect</p> <p>20 the information so that the individuals producing</p> <p>21 it and relying on it has confidence it's not going</p> <p>22 to be misused? And so that's to me the nut of a</p> | 47 | <p>1 have explained it to me. So that's how I see it.</p> <p>2 Mr. McDonald, this was plaintiff's motion.</p> <p>3 I'm sorry if it's Mr. Lawrence who's arguing it, I</p> <p>4 don't know. I want to understand why your</p> <p>5 protective order is the best way to go, and if --</p> <p>6 and how we're going to use that. Okay?</p> <p>7 MR. McDONALD: Mr. Lawrence is prepared to</p> <p>8 argue that.</p> <p>9 THE COURT: Okay. Thank you.</p> <p>10 MR. LAWRENCE: Yes, Your Honor, thank you.</p> <p>11 The reason for the protective order is the way to</p> <p>12 go is two provisions that are disputed here. As</p> <p>13 Your Honor points out, we agree there needs on to</p> <p>14 be a confidentiality agreement. There needs to be</p> <p>15 some protections afforded. And so we agree with</p> <p>16 that, and we think that the version that doesn't</p> <p>17 include supervision is appropriate. And that's</p> <p>18 because the Court will have authority to monitor</p> <p>19 it should there be some alleged violation of it.</p> <p>20 And the Court can fashion whatever remedies are</p> <p>21 appropriate if that should arise. Now, we're</p> <p>22 confident it won't arise from our side because</p> |
| 46 | <p>1 protective order, is it gets people to have some</p> <p>2 confidence in what they're disclosing is not going</p> <p>3 to be misused, and that they can use it if they</p> <p>4 need to use it.</p> <p>5 So that's the idea. I don't want to</p> <p>6 create a problem, additional hurdles, but at the</p> <p>7 same time, if you don't have confidence that when</p> <p>8 you turn things over it won't be misused, you're</p> <p>9 going to have some trouble getting that</p> <p>10 information or you're going to be more combative</p> <p>11 about it. And so the idea is try and take some of</p> <p>12 that discomfort away or lack of trust. And I can</p> <p>13 tell you there's a clear lack of trust here. So I</p> <p>14 want to eliminate that as much as I can, but at</p> <p>15 the same time let you all get what you need.</p> <p>16 Because I think, as I said earlier, airing</p> <p>17 some of these issues out like seeing the documents</p> <p>18 or seeing the materials and answering the</p> <p>19 questions is going to help you all get a clearer</p> <p>20 picture of what your clients are telling you and</p> <p>21 what you all can do. So that's how I've always</p> <p>22 viewed these, and I think as a lawyer how judges</p> | 48 | <p>1 obviously we take it very seriously. These are</p> <p>2 very normal for the type of litigation that we</p> <p>3 handle. Our clients, one is a judge, one is a</p> <p>4 lawyer, they understand the obligations that they</p> <p>5 have in connection with this litigation as well,</p> <p>6 Your Honor.</p> <p>7 So we think that the order is necessary,</p> <p>8 and we think that the order as is standard is</p> <p>9 appropriate. Now, speaking specifically, first</p> <p>10 off, the liquidated damages provision, which has</p> <p>11 handcuffed Your Honor and prejudged what remedy</p> <p>12 would be appropriate if there's an allegation and</p> <p>13 finding of some breach on either side. We think</p> <p>14 that's wholly inappropriate for Your Honor. We</p> <p>15 think you have the inherent authority to address</p> <p>16 it however is necessary.</p> <p>17 There's a difference between going to a</p> <p>18 mile over the speed limit versus, you know,</p> <p>19 murdering someone. So it doesn't need to be in</p> <p>20 there. It's unprecedented. It's never been done</p> <p>21 before, Your Honor, in the context -- except</p> <p>22 potentially there might be one case in all of U.S.</p> |

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13 (49 to 52)

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| 49 | <p>1 juris prudence that found -- that entered an order 2 that the parties had agreed to. It's just 3 unprecedented. And \$150,000 per violation, it 4 doesn't even relate -- we don't even know what the 5 situation is. So liquidated damages clause shows 6 up out of nowhere, has no precedent, and the Court 7 should reject it.</p> <p>8 As for the attorneys' eyes only provision, 9 it similarly has no place in a shareholder dispute 10 like this. My clients, at least they've -- we 11 believe they're 50 percent owners of this 12 corporation. They concede on the other side that 13 they're at least one-third owners of this 14 corporation. So they're major shareholders of 15 this corporation, and they alone are going to be 16 the ones that are going to be able to assist or 17 aid in their own prosecution of the claims and 18 potentially defense of any counterclaims.</p> <p>19 So I can't -- I am just a lawyer, Your 20 Honor, as you know. I'm a fiduciary to them, I'm 21 serving them, I'm not involved in these facts like 22 Mr. Stern is. I don't know the significance of</p> | 51 | <p>1 And it would just create more mischief, Your 2 Honor, if it's placed in there.</p> <p>3 Now, if there's something that Mr. Stern 4 or Ms. Harris come up with that they want to 5 approach the Court with and come to you and say, 6 this needs attorneys' eye only protection and you 7 can obviously see what it is, we're not saying -- 8 whenever the Court enters an order, there's never 9 a preclusion that you will not go back and revisit 10 the order or try to get something in addition to 11 the order.</p> <p>12 But we think putting it in the order just 13 creates the opportunity for mischief. This is not 14 a trade secret case, this is not an antitrust case 15 between competitors. And everything they bring up 16 with regard to these supposed proton emails and 17 anonymous complaints, Your Honor, that is the 18 subject of a lawsuit that Mr. Stern filed against 19 three individuals who are not my clients in 20 Montgomery County, Maryland. He did not name any 21 complaints. And so he's coming to you and saying 22 here's evidence of what they're going to do with</p> |
| 50 | <p>1 documents. I have to rely upon my client to tell 2 me that. I don't have an expert either that's 3 going to tell me, you know, the context of all 4 this.</p> <p>5 So it would be -- it would be 6 inadministerable for me to be able to just receive 7 documents, evaluate them, and use them in the 8 prosecution and defense of my clients without 9 consulting my clients regarding these documents. 10 So the attorneys' eyes only provision comes up -- 11 and I've seen it before and I've had to use myself 12 in the context of trade secrets.</p> <p>13 Now, my clients are competitors with 14 Compass, they are Compass. They are -- they are 15 the founders along with Mr. White on the other 16 side of this company. And so the trade secrets, 17 if there are any, that would be disclosed to us, 18 the confidential financial information. If there 19 is any, that needs to be disclosed to us, that was 20 information that my clients were involved in at 21 the time. So there's no purpose to have my 22 clients shielded from the discovery in this case.</p> | 52 | <p>1 information if they get it, and yet he's filed a 2 lawsuit in the state court in Maryland making 3 those same allegations against three other 4 individuals. So which is it?</p> <p>5 It's just not needed and it would be 6 unadministerable for you, Your Honor, it would 7 handcuff us as counsel to not be able to satisfy 8 our professional obligations.</p> <p>9 THE COURT: Okay. Well, just so it's 10 clear, I didn't read what I think was originally 11 paragraph nine in this -- or eight in this 12 proposed protective order to say that the 13 materials in general are attorneys' eyes only. It 14 only suggests that if there's documentation that 15 they view highly confidential information that you 16 would have further discussions to create some sort 17 of protections around that, which might include 18 attorneys' eyes only, because I didn't want to 19 blanket agree that all of it was at the same level 20 of confidentiality or protection.</p> <p>21 So it was a provision -- and I don't know 22 what the information is, and I'm clearly not going</p> |

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14 (53 to 56)

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| 53 | <p>1 to prejudice what it is because it hasn't been</p> <p>2 disclosed yet. But it strikes me that that's the</p> <p>3 triggering position or triggering provision where</p> <p>4 it goes on to say if the parties cannot reach</p> <p>5 agreement and the producing party continues to</p> <p>6 withhold, then the producing party -- so in other</p> <p>7 words, it puts the onus on them to file a</p> <p>8 particular motion, seeks a resolution with the</p> <p>9 Court.</p> <p>10 So yes, it creates a cumbersome area if</p> <p>11 you all can't agree, but it presupposes you will</p> <p>12 agree on how to manage it. And it doesn't say</p> <p>13 that all the materials are going to be for your</p> <p>14 eyes only and not your clients, because I would</p> <p>15 have to agree in a case of a closely held company</p> <p>16 like this and how personally involved they were,</p> <p>17 they're going to have to see a lot of this</p> <p>18 information obviously to make sense of it and help</p> <p>19 you craft your case. So I don't think there's any</p> <p>20 dispute about that.</p> <p>21 The question is whether this provision as</p> <p>22 drafted is over the top. So the question I'd have</p> | 55 | <p>1 what did you envision would be something that</p> <p>2 would be of that sort?</p> <p>3 MR. STERN: I'm more comfortable answering</p> <p>4 that. To me this is a pretty typical provision</p> <p>5 that I've included in protective orders before</p> <p>6 saying, hey, if you come across something that</p> <p>7 seems like this is beyond the pale and this is</p> <p>8 something that's super confidential that we've got</p> <p>9 to limit it to attorneys eyes', it's in there for</p> <p>10 that possibility.</p> <p>11 You were spot on with describing the</p> <p>12 provision. It's not saying that everything is</p> <p>13 going to be attorneys' eyes. There is a meet and</p> <p>14 confer obligation on the front end. So it's for</p> <p>15 the extraordinary circumstances when there's</p> <p>16 something that's really highly confidential. This</p> <p>17 is really -- probably in the context of this case,</p> <p>18 one example would be some prospective business</p> <p>19 dealings that these plaintiffs have shown an</p> <p>20 inclination to sabotage the company.</p> <p>21 The information of investment in</p> <p>22 Teknetics, for example, they were one of a small</p> |
| 54 | <p>1 for Mr. Stern then is with regard to that</p> <p>2 provision, you obviously had some thoughts about</p> <p>3 the materials that may fall into the category of</p> <p>4 highly confidential information, and I guess my</p> <p>5 question is, you know, is that a lot of</p> <p>6 information? Is it a little bit of information?</p> <p>7 Because ultimately if it's all viewed from</p> <p>8 your point of view as the producing party, they're</p> <p>9 not arguing it from the other side, mind you,</p> <p>10 they're only arguing it from this side as the</p> <p>11 receiving party. But as the producing party, do</p> <p>12 you expect that a large percentage of these</p> <p>13 documents or answers are going to be, quote,</p> <p>14 highly confidential information?</p> <p>15 MR. STERN: I think it's a fair question,</p> <p>16 and unfortunately I don't have a clear answer on</p> <p>17 that, Your Honor. We drafted this back at the</p> <p>18 very beginning of discovery while we were</p> <p>19 gathering information, and I haven't really, quite</p> <p>20 frankly, studied it that much since to know what</p> <p>21 would be fit into that category.</p> <p>22 THE COURT: When you wrote the document,</p> | 56 | <p>1 handful of people that had access to that</p> <p>2 information. Yet somehow during the bankruptcy</p> <p>3 proceeding involving Teknetics, somehow the</p> <p>4 investor was told about misinformation about how</p> <p>5 that information was being used.</p> <p>6 They're one of the small handful of people</p> <p>7 on earth that knew about that deal. How did it</p> <p>8 end up in the investors hands? So to me that's</p> <p>9 significant evidence of them trying to not protect</p> <p>10 this company but tear this down.</p> <p>11 We haven't had the chance to get full</p> <p>12 discovery that to confirm it was them, but the</p> <p>13 inferences are there. Now, Mr. Lawrence is trying</p> <p>14 again, you know, misdirect. He's talking about</p> <p>15 that other lawsuit. A couple of other things</p> <p>16 about that lawsuit. That was filed against three</p> <p>17 John Does. Since the filing of that lawsuit we've</p> <p>18 been able to confirm the owner of that P.O. Box</p> <p>19 was a close personal and former colleague of</p> <p>20 Michael White's. We've now confirmed that. What</p> <p>21 are the odds of that?</p> <p>22 Again, the information that's being</p> |

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15 (57 to 60)

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| 57 | <p>1 disseminated in an effort to tear down Compass, 2 these plaintiffs are in a unique position being 3 some of the few people on earth that have the 4 access to the contacts, the information, and so if 5 somebody's going to be prospectively hurting 6 company or something in some other way that is -- 7 that they can use weaponize, we have to have that 8 tool available to us to be able to protect the 9 company. 10 This case is all about misdirection, Your 11 Honor. I know -- they keep trying to throw in 12 some of the merits here, but I have to as well to 13 protect Compass here. This effort to dissolve the 14 company is to cover up their own misdeeds. And 15 we've now presented substantial evidence to the 16 Court that not only are they hurting the company 17 by taking from it, they're hurting the company by 18 trying to interfere with relationships, destroying 19 investment opportunities, destroy customer 20 relationships. 21 The question isn't about -- when he talks 22 about proton mail, the question isn't whether or</p> | 59 | <p>1 penalty imposed on them, don't break the 2 confidentiality. Don't violate it. It's really 3 simple. They're in complete control of their 4 compliance. No one else is. You have to ask 5 yourself, why would they be so opposed to this? 6 We've not included the monetary figure as the 7 example about that investment. I will tell you, 8 Your Honor, that monetary loss is multiple times 9 more than the liquidated damages provision that's 10 in dispute. 11 So the amount of harm -- the purpose of 12 liquidated damages is when the measure of damages 13 is difficult to ascertain. And depending on the 14 nature of the violation, unfortunately the harm 15 that could be brought to Compass can't be greater 16 than the 150,000 liquidated damages provision, and 17 in some instances maybe less, but I come back to 18 the same question as before. Why are they so 19 opposed to it? Look at all the quote/unquote 20 anonymous attacks on this company. There's a 21 high, high degree of concern and confidence that 22 they're the people that are doing this, and</p> |
| 58 | <p>1 not somebody else is going to sue, the question is 2 to Dan White and Michael White, who are on this 3 call today, have they ever used or operated a 4 proton mail account, but they're not telling you 5 that. Why is that? Because we are fairly 6 confident the answer is yes and they're the ones 7 that are disseminating this information. They're 8 not getting on the line to tell you that. There's 9 a reason -- 10 THE COURT: I wouldn't expect them to. 11 That's not way this operates. This is all legal 12 stuff. All right. So, Mr. Stern, the last 13 question from me then to put this back on you for 14 any comment is Mr. Lawrence's argument that 15 imposing a liquidated damages provision, 16 especially to the tune of six figures, is neither 17 something that's precedent or is appropriate given 18 that, you know, any minor infraction would still 19 involve in the same relatively draconian, if you 20 will, penalty. 21 MR. STERN: My response to that is quite 22 simple, Your Honor. If they don't want that</p> | 60 | <p>1 they're looking for an escape clause to continue 2 to do it and use this court as a lawful mechanism 3 to continue their attacks against Compass. 4 The simple answer is to -- for the 5 plaintiffs in this case, comply with the 6 protective order. But, in fact, Mr. Lawrence's 7 argument almost implies that they're prone to 8 violate it because, well, what if the violation is 9 not that severe? Your Honor it's, almost an 10 admission. You have to look behind the surface of 11 what's being said and look at the question of why 12 and where this is really coming from. 13 It's almost like I'm in the Wizard of Oz. 14 Don't look behind the curtain. Just look at the 15 smoke screen in front of you. And that's what's 16 going on. 17 THE COURT: So, Mr. Lawrence, final word 18 on any of that and I'll wrap up that. 19 MR. LAWRENCE: Yes, Your Honor. As you 20 heard, he has no precedent for liquidated damages 21 involved. He also might be comfortable with, you 22 know -- in some (inaudible) involved the history</p> |

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16 (61 to 64)

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| 61 | <p>1 of cutting off hands (inaudible) the loaf of</p> <p>2 bread. We don't need to set down parameters as to</p> <p>3 what would happen if someone, not my clients, if</p> <p>4 someone violates it. Mr. Stern will be able to</p> <p>5 prove up whatever damages and I will be able to</p> <p>6 prove up whatever (inaudible.)</p> <p>7 More telling, Your Honor, you asked the</p> <p>8 question, what does he have that's attorneys' eyes</p> <p>9 only? What does he points to? He points to</p> <p>10 nothing. And he points to an example that's</p> <p>11 Exhibit 26 of his opposition where an investor</p> <p>12 said, hey, wait, I just learned that Teknetics</p> <p>13 isn't solid and is in bankruptcy, so I'm going to</p> <p>14 go through this deal anymore.</p> <p>15 First off, the fact that Teknetics was in</p> <p>16 bankruptcy isn't something that deserves</p> <p>17 attorneys' eyes only protection. That's the type</p> <p>18 of stuff he's looking for. These anonymous emails</p> <p>19 were emails or packages that he lines up that he</p> <p>20 has litigation concerning in Maryland. All of</p> <p>21 them are forwarded copies in the complaint, copies</p> <p>22 of public hearing, copies of maybe the transcript</p> | 63 | <p>1 is an interesting concept because if you believe</p> <p>2 in the concept of deterrents, maybe not community</p> <p>3 wide deterrents, but deterrents in a particular</p> <p>4 case, knowing that there's a steep price to pay</p> <p>5 for a violation is well worth understanding. And</p> <p>6 so extra caution would be taken. But it's also</p> <p>7 the safeguard for the producing party.</p> <p>8 I don't want to have trials within trials</p> <p>9 within trials. And if I'm going to impose a</p> <p>10 sanction, which is what the motion would be if</p> <p>11 someone filed breach of the confidentiality</p> <p>12 agreement, I'd have to have a whole trial and hear</p> <p>13 a whole thing about damages. I feel like --</p> <p>14 Mr. Stern's argument is succinct, meaning if you</p> <p>15 don't want to have liquidated damages, don't</p> <p>16 breach the agreement, but that's also a really</p> <p>17 powerful message, right?</p> <p>18 So I don't think that the liquidated</p> <p>19 damages provision, maybe there are no cases on it</p> <p>20 because no one's appealed it, I don't know, but it</p> <p>21 doesn't seem wrongheaded on the face of it. So</p> <p>22 that part of it is actually not as disturbing to</p> |
| 62 | <p>1 of maybe this hearing. This is not stuff that</p> <p>2 deserves attorneys' eyes only. So he's got</p> <p>3 nothing that shows you that this should be in</p> <p>4 here, and if it is in here, I can almost</p> <p>5 guarantee, Your Honor, he'll be conferring with</p> <p>6 you.</p> <p>7 MR. STERN: Your Honor --</p> <p>8 MR. LAWRENCE: I've never interrupted you,</p> <p>9 Mr. Stern.</p> <p>10 THE COURT: Mr. Stern, no.</p> <p>11 MR. LAWRENCE: And, Your Honor, I can</p> <p>12 almost assure you there's going to be several</p> <p>13 conferences, there's going to be more motions,</p> <p>14 there's going to be more delay. We've had enough</p> <p>15 of that in this case. Now, if something were to</p> <p>16 come up, of course I can't -- there's no motion by</p> <p>17 me to have the Court order that Mr. Stern can't</p> <p>18 bring up things in the future. And that's the way</p> <p>19 it should be dealt with, Your Honor, we</p> <p>20 respectfully request.</p> <p>21 THE COURT: And I was reviewing this</p> <p>22 earlier. I think the liquidated damages provision</p> | 64 | <p>1 me.</p> <p>2 What I do find troubling about the</p> <p>3 additional protection provision that was proposed</p> <p>4 originally by Compass is I think the point that</p> <p>5 Mr. Lawrence is making, which is we're bogging</p> <p>6 ourselves down what if and what if and what if</p> <p>7 scenario. I think he's right in that I think</p> <p>8 provision should probably read something to the</p> <p>9 effect of nothing herein precludes a party from</p> <p>10 seeking additional protections from the court.</p> <p>11 And what would that would mean providing</p> <p>12 the information and telling the Court, look, we</p> <p>13 really think this should be attorneys' eyes only</p> <p>14 or whatever the protection is that you're seeking.</p> <p>15 Because this is a pretty expansive document, this</p> <p>16 confidentiality agreement is pretty expansive, and</p> <p>17 it provides a lot of protection for everybody.</p> <p>18 And I think if you go into it saying we're always</p> <p>19 going to have to argue about something that's not</p> <p>20 really a defined term, highly confidential</p> <p>21 information, it's going to create a lot of</p> <p>22 problems.</p> |

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17 (65 to 68)

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| <p style="text-align: right;">65</p> <p>1 I realize why the provision was put in</p> <p>2 there, I understand it, in other words I have to</p> <p>3 be careful, Judge, because there's information</p> <p>4 we're concerned about. But I don't think that's</p> <p>5 going to get you very far in discovery except to</p> <p>6 create more of these impasses.</p> <p>7 So knowing that the next level is you have</p> <p>8 to come to court I think is probably the better</p> <p>9 approach. So I don't have heartburn actually</p> <p>10 about the liquidated damages, I think that gives</p> <p>11 you that protection that you want. You want there</p> <p>12 to be something out there that says, this is so</p> <p>13 important that we mean business, six figures of</p> <p>14 damages if you violate it. And then that's on you</p> <p>15 if you violate it.</p> <p>16 But I think that paragraph eight or nine,</p> <p>17 whichever was the original number on that should</p> <p>18 probably be amended to say that nothing herein</p> <p>19 precludes a producing party from seeking</p> <p>20 additional protection from the court. And so I'm</p> <p>21 sort of splitting it, I guess I'm giving you each</p> <p>22 half a baby there. Split the baby a little bit.</p> | <p style="text-align: right;">67</p> <p>1 problematic about that to me is I think Mr. Stern</p> <p>2 is correct in his opposition that he writes that</p> <p>3 there's really not -- the rule doesn't permit</p> <p>4 that. And I don't think putting off things until</p> <p>5 one person's answered and another person's</p> <p>6 answered. You all have already propounded</p> <p>7 discovery and it has its own internal deadlines,</p> <p>8 right?</p> <p>9 If stuff was sent out in October, that had</p> <p>10 a response date. And it looks like everybody is</p> <p>11 overdue but a lot a lot on these responses. And</p> <p>12 so I don't think setting up a discovery schedule,</p> <p>13 I guess, that says Mr. Stern has to respond first</p> <p>14 before we respond or the other way around, I don't</p> <p>15 think that is any merit. You all propounded</p> <p>16 discovery already and it already has deadlines, so</p> <p>17 why would we be doing that? I don't understand</p> <p>18 it.</p> <p>19 MR. LAWRENCE: Because, Your Honor, we</p> <p>20 believe there needs to be a court order telling</p> <p>21 the parties you need to respond by a particular</p> <p>22 day. You could even do it simultaneously. What's</p> |
| <p style="text-align: right;">66</p> <p>1 So I think that will help you. Now that you have</p> <p>2 a protective order, confidentiality agreement,</p> <p>3 whatever you're going to call it, I think you all</p> <p>4 should be dumping documents on each other like</p> <p>5 crazy. All right?</p> <p>6 So that's how I would resolve that</p> <p>7 argument. And hopefully that will work for you</p> <p>8 all a little bit better. I just think you all</p> <p>9 need closure on that. So that's your protective</p> <p>10 orders done. And that puts us to -- and I guess I</p> <p>11 need some clarity, and this is going to go to</p> <p>12 setting dates for these other hearings.</p> <p>13 There's a request for protective order,</p> <p>14 this is plaintiff's motion four or the fourth</p> <p>15 motion. Motion for protection and discovery plan,</p> <p>16 I think. Is that an additional protective order,</p> <p>17 Mr. Lawrence?</p> <p>18 MR. LAWRENCE: Yes, it is Your Honor what</p> <p>19 it seeks to do is have the court issue an order as</p> <p>20 to the timing and sequence of discovery.</p> <p>21 THE COURT: That's right. So that's the</p> <p>22 discovery plan issue. All right. What's</p> | <p style="text-align: right;">68</p> <p>1 going to happen, what has happened is that there's</p> <p>2 impediments thrown up at the last minute and</p> <p>3 Mr. Stern is beating on us to say, bring your</p> <p>4 discovery, bring your discovery.</p> <p>5 Now, we had the impediment as well too</p> <p>6 with regard to the protective order, which Your</p> <p>7 Honor has now cleared the way for, but the bottom</p> <p>8 line is there's extreme gamesmanship going on with</p> <p>9 regard to the discovery -- well, that's the way we</p> <p>10 view it, Your Honor.</p> <p>11 THE COURT: I know. Both of you view it</p> <p>12 that way.</p> <p>13 MR. LAWRENCE: So, for example --</p> <p>14 THE COURT: That's the trust problem I'm</p> <p>15 talking about; right?</p> <p>16 MR. LAWRENCE: Sure. And, for example,</p> <p>17 kind of one of the most notable examples is that</p> <p>18 we were trying to clear the dates in January with</p> <p>19 regard to setting third party depositions up,</p> <p>20 which we thought would be the most efficient way</p> <p>21 for it because at least we'd get something going</p> <p>22 here, and Ms. Harris suddenly had available dates</p> |

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18 (69 to 72)

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| 69 | <p>1 on the 7th and 8th, and I had a list of four</p> <p>2 witnesses that I was trying to schedule, and</p> <p>3 Mr. Stern then notes my client's depositions for</p> <p>4 those dates.</p> <p>5 Now, that's entirely inappropriate for a</p> <p>6 lot of reasons. Number one, I was looking for</p> <p>7 dates, and then he jumped in with dates. Number</p> <p>8 two, Ms. Harris's client isn't even in the case</p> <p>9 yet. And so for us to be moving forward with my</p> <p>10 client's depositions before they've completed any</p> <p>11 written discovery, substantive written discovery,</p> <p>12 there's been some tickle, before any of that it</p> <p>13 was just gamesmanship, Your Honor.</p> <p>14 THE COURT: Mr. Lawrence, here's the</p> <p>15 thing. I've seen a lot of it on both sides. And</p> <p>16 I'm not suggesting any of it is wrong or right.</p> <p>17 It's strategic. All of this is strategic. You</p> <p>18 all are resisting certain things for whatever</p> <p>19 reasons, they're resisting certain things for</p> <p>20 certain reasons and you've come to an impasse. So</p> <p>21 I feel like I feel like I'm sort of in my drug</p> <p>22 court where I'm trying to talk to the participants</p> | 71 | <p>1 So with respect to the order of things.</p> <p>2 As I said originally, you kind of already set out</p> <p>3 the order of things. You've propounded discovery.</p> <p>4 So maybe the answer to the question is where are</p> <p>5 we on compelling everybody? Maybe that's the next</p> <p>6 question, because it feels like that's where</p> <p>7 Mr. Lawrence is concerned. That look, Judge, you</p> <p>8 need to compel everybody to do stuff otherwise</p> <p>9 we're not going to get off the dime. And when are</p> <p>10 you going to compel us to produce; right? But</p> <p>11 everybody has a motion to compel today. Not</p> <p>12 Ms. Harris, but, you know, Compass and the White</p> <p>13 brothers have motions to compel. Okay?</p> <p>14 So I'm just going to ask you succinctly,</p> <p>15 Mr. Lawrence, on your motion to compel, when are</p> <p>16 you looking to have -- assuming I agree to compel</p> <p>17 it, when are you looking to have Compass produce</p> <p>18 these materials that you're seeking in the motion?</p> <p>19 MR. LAWRENCE: So we proposed in the order</p> <p>20 that they would provide their written responses</p> <p>21 within five days of the entry of the above</p> <p>22 confidentiality order, and we would provide ours</p> |
| 70 | <p>1 and help them understand the ways of recovery --</p> <p>2 thankfully I've never been in recovery, but I can</p> <p>3 talk the talk a little bit. I have been in your</p> <p>4 shoes before. So we all need to get into recovery</p> <p>5 today on this on how we're managing moving the</p> <p>6 case forward.</p> <p>7 So I accept your representations of how</p> <p>8 you view this case, and I accept Mr. Stern's view</p> <p>9 of how he views the case. Okay? Those are your</p> <p>10 truths, if you want to call it that. I'm feeling</p> <p>11 very woke at the moment. Anyway. My point is it</p> <p>12 doesn't help to sort of sit in that so long. I</p> <p>13 think we have -- you're in front of me because</p> <p>14 you're at an impasse and I commend you for</p> <p>15 bringing it to me. So let's get out from under</p> <p>16 the feelings and get onto really how we're going</p> <p>17 to move ahead.</p> <p>18 The Court hears the accusations on both</p> <p>19 sides and wants you all to get to a place of</p> <p>20 discovery where you can see whether there's any</p> <p>21 merit to any of this, okay? All right. Thank you</p> <p>22 for indulging me.</p> | 72 | <p>1 within 14 days thereafter. And then we put the</p> <p>2 parties' depositions at the back end of the</p> <p>3 discovery as it relates to a scheduling order,</p> <p>4 Your Honor. And we think that's the appropriate</p> <p>5 order because there is a lot to be done in the</p> <p>6 case and the -- you know, if we just play</p> <p>7 strategic discovery with each other -- and I'm</p> <p>8 actually -- I'm willing to consider alternatives</p> <p>9 that Mr. Stern would propose. In fact, I asked</p> <p>10 him for that proposal, and I would give him more</p> <p>11 time for it if it sets up with schedule fine.</p> <p>12 THE COURT: I got your answer. Let me</p> <p>13 just say, Mr. Lawrence, I don't agree that they</p> <p>14 would be required to respond before you respond.</p> <p>15 I wouldn't agree to that. I don't agree to that.</p> <p>16 I think we're going to pick a time, a day, maybe</p> <p>17 it's just two weeks for everybody to gets their</p> <p>18 answers across. You'll have the same deadline.</p> <p>19 Mr. Stern has 14 days or too much time, you want</p> <p>20 these response sooner, how would you like to</p> <p>21 handle it?</p> <p>22 MR. STERN: Let me pull up my calendar</p> |

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19 (73 to 76)

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| 73 | <p>1 because I do know I've got a little trip coming up</p> <p>2 in the next period of time here, so...</p> <p>3 THE COURT: I would think you want this</p> <p>4 done before you leave so you can go and have a</p> <p>5 good time before having it on your conscious.</p> <p>6 MR. STERN: I would. So am I</p> <p>7 understanding you correctly, Your Honor, that</p> <p>8 you're looking for a date where both parties</p> <p>9 produce their documents the same day?</p> <p>10 THE COURT: Yeah.</p> <p>11 MR. STERN: I would say then by the 19th</p> <p>12 or -- March 19th? I think that should be fine.</p> <p>13 THE COURT: Sure. I think that makes</p> <p>14 sense. That gives you a little more than a week,</p> <p>15 you'll just be busy. And that way both of you do</p> <p>16 your discovery dumps on each other, I think that's</p> <p>17 what we call it at this point, there's quite a lot</p> <p>18 of built up things. I think what you're going to</p> <p>19 want to have done, you're going to sign the</p> <p>20 confidentiality agreement today, you'll have time</p> <p>21 to do it today, that should be your order of</p> <p>22 business, to get that confidentiality agreement</p> | 75 | <p>1 well?</p> <p>2 THE COURT: Everything. You've had months</p> <p>3 and months to see this and work on it; right? So</p> <p>4 the motion to enlarge, I don't understand the</p> <p>5 motion to enlarge.</p> <p>6 MR. LAWRENCE: Well, I understand, Your</p> <p>7 Honor. I think you just mooted it. But with</p> <p>8 regards to discovery plan, is there any order with</p> <p>9 regards to the depositions?</p> <p>10 THE COURT: Why? Why?</p> <p>11 MR. LAWRENCE: Because they're not</p> <p>12 producing discovery. We've had the impasse with</p> <p>13 regards to discovery, we've had all these</p> <p>14 scheduling issues, we don't have Mr. White in the</p> <p>15 case yet. He's going to want to have his rights</p> <p>16 for discovery against our clients as well too.</p> <p>17 THE COURT: What you're asking me to do is</p> <p>18 make a number of rulings that are not before me --</p> <p>19 MR. LAWRENCE: But that --</p> <p>20 THE COURT: -- because you're presupposing</p> <p>21 -- hold on. Let me finish why. You're</p> <p>22 presupposing there's going to be an objection to</p> |
| 74 | <p>1 signed, and then that should give you all the</p> <p>2 confidence that you require to produce that</p> <p>3 material, okay?</p> <p>4 MR. STERN: Your Honor, one other point on</p> <p>5 that. I also think it's important, as Your Honor</p> <p>6 may recall from our requests, we think plaintiffs</p> <p>7 should waive all their objections because they've</p> <p>8 not served a single objection, not a single</p> <p>9 response, and it's not that they don't know what</p> <p>10 the rules are, the rules clearly require it. They</p> <p>11 even have our sample to explain -- as an</p> <p>12 illustration even if they can claim some</p> <p>13 indifference.</p> <p>14 THE COURT: That brings us to another</p> <p>15 motion, doesn't it, the plaintiffs's motion to</p> <p>16 enlarge; is that right?</p> <p>17 MR. STERN: That's where they all</p> <p>18 interrelate.</p> <p>19 MR. LAWRENCE: With regards to our request</p> <p>20 for discovery plan, is it -- is Your Honor certain</p> <p>21 about the 19th, we would also have answers to</p> <p>22 interrogatories and requests for admission as</p> | 76 | <p>1 your noticing of Ms. Harris's client. You're</p> <p>2 presupposing there's going to be an objection to</p> <p>3 the depositions, which you've had as a scheduling</p> <p>4 conflict because you're trying to use some January</p> <p>5 dates and he's trying to use some January dates</p> <p>6 and the like.</p> <p>7 If you want to go back and set up -- if</p> <p>8 you all are in agreement to set up deposition</p> <p>9 dates prior to the various hearing dates we're</p> <p>10 going to pick, that's one thing, because you need</p> <p>11 an interim discovery order if you all agree those</p> <p>12 depositions need to take place, okay? But I'm not</p> <p>13 in the habit of just normally getting involved in</p> <p>14 micromanaging your discovery. That's normally</p> <p>15 handled with one of our form scheduling orders</p> <p>16 when you have a trial date. Okay?</p> <p>17 So I don't want to get into the minutia of</p> <p>18 it except that I want to get something agreed to</p> <p>19 from you all at least verbally today that you</p> <p>20 intend that these depositions need to be taken and</p> <p>21 before these hearing dates come up. If the answer</p> <p>22 is they don't need to be taken, then you should be</p> |

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20 (77 to 80)

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| 77 | <p>1 efforting, if you will, to get discovery done that</p> <p>2 pertains to these motions and will affect your</p> <p>3 hearing dates and the motions that are going to be</p> <p>4 heard on those hearings dates. That's what I feel</p> <p>5 like where we are right now.</p> <p>6 MR. LAWRENCE: Your Honor, I believe the</p> <p>7 depositions are necessary. And the reason I say</p> <p>8 that is because there's exigent circumstances for</p> <p>9 these motions, particularly the custodian, so</p> <p>10 we're prepared to proceed forward --</p> <p>11 THE COURT: The custodian -- hold it. I'm</p> <p>12 not scheduling the pendente lite custodian until</p> <p>13 after we hear these other motions. And I don't</p> <p>14 know when you all are going to be available to do</p> <p>15 -- we haven't even discussed those dates yet. So</p> <p>16 it's really the motion to dismiss, the plea in</p> <p>17 bar, and the motion to disqualify Mr. Stern that</p> <p>18 are the first three motions we're going to have</p> <p>19 heard, okay?</p> <p>20 So let's -- I don't think it's exigent at</p> <p>21 all. I think that's the order in which we have to</p> <p>22 have this case heard. So -- and again, I don't</p> | 79 | <p>1 we're saying is coordinate with us, but they're</p> <p>2 not. They are issuing subpoenas to Compass</p> <p>3 employees.</p> <p>4 THE COURT: Hang on. First thing's first.</p> <p>5 Discovery responses -- this would be</p> <p>6 interrogatories and request for production of</p> <p>7 documents, those are due in 14 days. So that puts</p> <p>8 us to the 25th, close of business. 3/25. That's</p> <p>9 mutual. Okay?</p> <p>10 MR. STERN: Can we take it to the</p> <p>11 following day, the 26th? Discovery responses on</p> <p>12 the 25th?</p> <p>13 THE COURT: What's the difference?</p> <p>14 MR. STERN: I'm out on the 24th and 25th</p> <p>15 so I'm asking for one more day on the 26th.</p> <p>16 THE COURT: 26th. All right. So that</p> <p>17 should be -- that's mutual. And --</p> <p>18 MR. LAWRENCE: Your Honor, would that</p> <p>19 include --</p> <p>20 THE COURT: There's not going to be --</p> <p>21 Mr. Stern raised the point that these are</p> <p>22 responses, not objections. Is there any</p> |
| 78 | <p>1 want to get into some micromanaging of discovery,</p> <p>2 but it looks like at least insofar as Mr. Lawrence</p> <p>3 is concerned, his motion sets forth five people</p> <p>4 plus the parties who need to be deposed. I don't</p> <p>5 know who these people are, but some of it appears</p> <p>6 to relate to Mr. Stern's law firm.</p> <p>7 MR. STERN: Your Honor --</p> <p>8 THE COURT: Those might have to take</p> <p>9 place.</p> <p>10 MR. STERN: Your Honor, the Maryland court</p> <p>11 has already quashed that discovery. They're not</p> <p>12 entitled to it. They've lost it. That's been</p> <p>13 ruled on dispositively by the Maryland court.</p> <p>14 THE COURT: I see.</p> <p>15 MR. STERN: So they're not entitled to it,</p> <p>16 that's not happening. Other people that are on</p> <p>17 there I believe on that list, I don't know if you</p> <p>18 recall seeing our brief, Your Honor, they've now</p> <p>19 disregarded three separate instructions not to be</p> <p>20 contacting Compass Marketing employees directly,</p> <p>21 yet they continue to issue subpoenas. We'll be</p> <p>22 having a motion forthcoming on this thing. All</p> | 80 | <p>1 disagreement about that?</p> <p>2 MR. LAWRENCE: We have not served our</p> <p>3 objections, Your Honor. So there are -- there are</p> <p>4 questions of which we would have objections.</p> <p>5 Mr. Stern himself has served substantial</p> <p>6 objections to a lot of these discovery as well.</p> <p>7 THE COURT: That's responsive. When were</p> <p>8 you served with the discovery?</p> <p>9 MR. LAWRENCE: We have the --</p> <p>10 MR. STERN: October 30th and November, I</p> <p>11 think, 8th or 12th.</p> <p>12 THE COURT: Why do you think you have more</p> <p>13 time to object?</p> <p>14 MR. McDONALD: If I may, I think there's a</p> <p>15 timing issue here because what originally happened</p> <p>16 was there was an extension granted and then there</p> <p>17 was a motion to enlarge time that would have taken</p> <p>18 us all the way to January 8th because Mr. Lawrence</p> <p>19 had an issue in his family. That motion -- that</p> <p>20 motion to enlarge time got moved to January 29th</p> <p>21 because of a docketing issue. And what then</p> <p>22 happened because we had too many issues on a</p> |

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21 (81 to 84)

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| 81 | <p>1 Friday, frankly, the Court -- the week of the 29th</p> <p>2 the Court called us and said, well, you guys got</p> <p>3 to make pick a new date. That's how we ended up</p> <p>4 here in March. There's been no effort to avoid</p> <p>5 noting objections. It was really -- it was a</p> <p>6 fluke of the calendar really that this got moved</p> <p>7 up twice.</p> <p>8 THE COURT: There's nothing that's</p> <p>9 happened. There hasn't even been an attempt to</p> <p>10 file anything. It's one thing.</p> <p>11 MR. McDONALD: I think, Your Honor, the</p> <p>12 idea was to have the motion to enlarge time and</p> <p>13 the discovery plan -- that was kind of put</p> <p>14 together to have that ruled on and to put everyone</p> <p>15 on the same a track. And then objections would be</p> <p>16 noted with our responses when the Court ruled that</p> <p>17 they were due.</p> <p>18 THE COURT: Okay. All of this is -- I'm</p> <p>19 confused about what you want from me, guys. At</p> <p>20 this point no one's answering anything, everyone's</p> <p>21 objecting to everything, there's no motion to</p> <p>22 compel to overrule objections, there's nothing.</p> | 83 | <p>1 me -- but there could be something that completely</p> <p>2 is unrelated to -- or overly broad request, we</p> <p>3 might interpose an objection.</p> <p>4 THE COURT: Well, why weren't you prepared</p> <p>5 to put that in writing originally? I think it's</p> <p>6 dereliction. I think it's latches or something</p> <p>7 like that. Here we are in March, no one has made</p> <p>8 any good faith effort to notify anybody about</p> <p>9 their objections to scope, anything. I can't</p> <p>10 grant a motion to enlarge. I can't. First of</p> <p>11 all, there was no effort to even notify. So no.</p> <p>12 There's not going to be a motion to enlarge.</p> <p>13 Everyone has a continuing obligation to</p> <p>14 supplement, so that has its own enlargement by</p> <p>15 rule, so no. Ya'll are going to answer these</p> <p>16 things by Friday, March 26th, close of business.</p> <p>17 MR. LAWRENCE: If I understand Your Honor</p> <p>18 correctly, does that mean both parties have waived</p> <p>19 --</p> <p>20 THE COURT: Yes.</p> <p>21 MR. STERN: Your Honor, wait a second.</p> <p>22 That's a mischaracterization of the record. We</p> |
| 82 | <p>1 It's just set up a discovery plan and make</p> <p>2 everybody do things in the order I want you to do</p> <p>3 them. That's not okay.</p> <p>4 How can you get discovery requests in</p> <p>5 October and November, never file any objections,</p> <p>6 and then move to enlarge to object? That's never</p> <p>7 happened in my experience. There's no good faith</p> <p>8 anything going on here.</p> <p>9 MR. LAWRENCE: We're not intending on</p> <p>10 putting on objections, Your Honor.</p> <p>11 THE COURT: Then why are you telling me</p> <p>12 you want to be object.</p> <p>13 MR. LAWRENCE: It would just be certain</p> <p>14 requests that we would interpose objections for.</p> <p>15 We can assert those in five days, Your Honor.</p> <p>16 MR. STERN: Your Honor, if I may.</p> <p>17 THE COURT: Then we don't get answers in</p> <p>18 14 days or 15 days either. I don't understand any</p> <p>19 of this.</p> <p>20 MR. LAWRENCE: We would give -- we would</p> <p>21 expedite all considerations of all of them. For</p> <p>22 example -- and I don't have it here in front of</p> | 84 | <p>1 served our objections. That's what -- there's</p> <p>2 been obfuscation here. We served our objections</p> <p>3 specific request by request by request in a</p> <p>4 time --</p> <p>5 THE COURT: Then you answered them.</p> <p>6 MR. STERN: We have. The plaintiffs have</p> <p>7 not served a single objection.</p> <p>8 THE COURT: I know.</p> <p>9 MR. STERN: We have not. They've not</p> <p>10 brought forth any of our specific objections. And</p> <p>11 by the way, many of them were premised on their</p> <p>12 dereliction and their delay.</p> <p>13 THE COURT: I know.</p> <p>14 MR. STERN: So I object to the ruling to</p> <p>15 punish us for their misconduct.</p> <p>16 THE COURT: I have ruled that your</p> <p>17 responses, if they're substantive and they've been</p> <p>18 hung up because of a protective order, are due on</p> <p>19 the 26th. Motion to enlarge, which would allow</p> <p>20 you to file objections, is denied because there's</p> <p>21 no been no showing of good faith on your end to</p> <p>22 actually tell them what the objections are. You</p> |

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22 (85 to 88)

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| 85 | <p>1 could have done that, but you didn't. And so I'm</p> <p>2 not going to give you an opportunity now to object</p> <p>3 to everything or anything, because you didn't do</p> <p>4 it. You didn't follow the words.</p> <p>5 MR. LAWRENCE: Your Honor, we believed in</p> <p>6 good faith that we were complying with the Court's</p> <p>7 requirements with regards to discovery. And I</p> <p>8 understand Your Honor's point, but the result</p> <p>9 would be that my clients may be required and</p> <p>10 compelled to respond to completely overly broad</p> <p>11 discovery with the threat of contempt being</p> <p>12 brought against them if this is your order, Your</p> <p>13 Honor.</p> <p>14 THE COURT: It is my order.</p> <p>15 MR. LAWRENCE: What I would say, Your</p> <p>16 Honor, is that would be a mistake of counsel, and</p> <p>17 not of my clients.</p> <p>18 THE COURT: And that argument can be made</p> <p>19 anytime, I know.</p> <p>20 MR. LAWRENCE: I understand, Your Honor,</p> <p>21 but we were hung up on the protective order issue</p> <p>22 with regards to responding to any discovery. We</p> | 87 | <p>1 THE COURT: 5:00 p.m.</p> <p>2 MR. LAWRENCE: And there's also request</p> <p>3 for admissions, Your Honor.</p> <p>4 THE COURT: All discovery. I don't know</p> <p>5 what's confusing about that. All right. So we've</p> <p>6 taken care of both motions to compel, it looks</p> <p>7 likes. And the motion to enlarge, done. So this</p> <p>8 takes us back then to motion three, which is,</p> <p>9 again, the motions to schedule these -- excuse me,</p> <p>10 the request to schedule certain things. All</p> <p>11 right.</p> <p>12 So we need to pick dates. So this is</p> <p>13 where you all I think will come to some</p> <p>14 understanding of what you need to do before these</p> <p>15 hearings in terms of depositions if necessary,</p> <p>16 right, and other discovery that might be</p> <p>17 outstanding. Although, I'm hopeful that getting</p> <p>18 these things by the 26th will help you get a lot</p> <p>19 of this done.</p> <p>20 So we can pick dates for your three</p> <p>21 hearing dates okay? And the motion to dismiss and</p> <p>22 disqualification motions are going to be heard on</p> |
| 86 | <p>1 thought we were --</p> <p>2 THE COURT: Listen, the protective order</p> <p>3 didn't stop them from filing objections, and it</p> <p>4 shouldn't have stopped you. I don't know why you</p> <p>5 didn't. Maybe you had a discussion your clients,</p> <p>6 I don't know. I don't want to get into that.</p> <p>7 That's not my area. I don't want to hear your</p> <p>8 client conversations. But whether it's your</p> <p>9 mistake or not, production, that's what's</p> <p>10 happening.</p> <p>11 You're not getting another opportunity</p> <p>12 months into this, months after this has been</p> <p>13 propounded to now object. That's how -- that's</p> <p>14 why there is -- why we're bogging down. So that</p> <p>15 is done. I think we got the cross motion for</p> <p>16 protective order already done, discovery plan --</p> <p>17 MR. STERN: Your Honor, just one point of</p> <p>18 clarification to make sure I'm understanding the</p> <p>19 deadline. On the 26th, that's going to be answers</p> <p>20 to interrogatories and document request?</p> <p>21 THE COURT: Yes.</p> <p>22 MR. STERN: Is that by 5:00 or midnight?</p> | 88 | <p>1 one day, and we need a date for that. We've</p> <p>2 already got Ms. Harris's motion scheduled, and so</p> <p>3 this should follow that date. It doesn't have to</p> <p>4 be very far after, but you need a day.</p> <p>5 MR. STERN: Your Honor, I didn't hear you</p> <p>6 say the motion to dismiss and motion for</p> <p>7 disqualification, one day?</p> <p>8 THE COURT: Yes. Yes. So it's going to</p> <p>9 be after April 12th; right? May is starting to</p> <p>10 look very terrible. We could probably do it on</p> <p>11 May 12th. Is that possible?</p> <p>12 MR. McDONALD: Your Honor, I'm in trial in</p> <p>13 the Eastern District that week.</p> <p>14 THE COURT: Okay. That would be a no.</p> <p>15 How about May 20th?</p> <p>16 MR. McDONALD: That's available for me,</p> <p>17 Your Honor.</p> <p>18 MR. STERN: May 20th works for me, Your</p> <p>19 Honor.</p> <p>20 THE COURT: Mr. Stern, that was good?</p> <p>21 That's a yes?</p> <p>22 MR. STERN: Your Honor, could you do the</p> |

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23 (89 to 92)

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| 89 | <p>1 21st instead? May 20th is a day I hold for 2 personal -- I'd rather not get into it. 3 THE COURT: I can't do Friday. The 26th? 4 MR. STERN: That works for me, Your Honor. 5 MR. LAWRENCE: That works for us. 6 THE COURT: May 26th. 7 MR. McDONALD: That's fine. 8 THE COURT: That's going to be for a day, 9 at most. It's going to be a trial, obviously an 10 evidentiary hearing on the disqualification. 11 Mr. McDonald seemed to think you might need 12 testimony on the dismissal. We'll wrap it all 13 together in one hearing, okay? So May 26th for 14 one day, bench trial. And then we're going to set 15 the plea in bar. Let me see what I can find for 16 you. 17 MS. HARRIS: Your Honor, are these 18 hearings as well my personal jurisdiction hearing 19 going to be remote? 20 THE COURT: They can be. Yeah. We could 21 probably do the plea in bar -- do you want to try 22 to do the plea in bar the following day, May 27th?</p> | 91 | <p>1 MR. STERN: That day works for me, Your 2 Honor. 3 THE COURT: That's a Thursday. Anybody 4 have a problem with that? 5 MR. LAWRENCE: I'm serving, Your Honor, as 6 an expert witness at trial that week, but I'm 7 almost certain I can contact counsel and have any 8 testimony taken out of order. 9 THE COURT: Okay. So June 3rd for one day 10 for a plea in bar. Did we estimate that would be 11 a day? 12 MR. STERN: Yes, Your Honor. 13 THE COURT: So then that brings us to 14 custodian pendente lite if it ends up being 15 needed, but we might as well set it in any event. 16 We're not looking at particularly good dates for 17 the next couple weeks at least following that plea 18 in bar, we're very busy, so let me see what I can 19 come up with for you. The best I can do for you 20 is probably -- is June 30th, and that might be 21 fortuitous, I don't know, but June would be my 22 next available for a couple of days, right?</p> |
| 90 | <p>1 MR. STERN: I have a pretrial conference 2 the following day, Your Honor. 3 THE COURT: Will it be all day? 4 MR. STERN: No, it's in the morning. 5 THE COURT: What time? 6 MR. STERN: 8:30, but it's going to last a 7 while because there's a lot that's going to be 8 covered in that. There's going to be several 9 motions that are going to be argued in all 10 likelihood. 11 THE COURT: I see. It's not just a 12 conference? 13 MR. STERN: No, this is just -- I'm 14 expecting, it's not been decided yet, but there's 15 probably going to be a lot of issues decided. 16 THE COURT: All right. How about 17 May 31st? 18 MR. STERN: That's Memorial Day. 19 MR. McDONALD: I think that's Memorial 20 Day, Your Honor. 21 THE COURT: It sure enough is. How about 22 June 3?</p> | 92 | <p>1 MR. LAWRENCE: That's good for us, Your 2 Honor. 3 THE COURT: Does that work for everybody? 4 MR. STERN: June 30th for one day? 5 THE COURT: Yeah. All right. So now that 6 -- now that you have some hard dates that aren't, 7 you know, next week, and if depositions are 8 required for these, then you all need to set a 9 date by which -- and I want you to do that with me 10 present -- a date by which all depositions or 11 other discovery related to these trials, because 12 I'm going to call them that, trials, will be 13 accomplished. 14 So how many days before each of these 15 trial dates do you want things done? So the 16 motion to dismiss and the motion to disqualify is 17 May 26th; right? And I don't know if you intend 18 to use anybody's testimony for these things, but 19 you could technically potentially do depositions 20 if you needed before that. And I would have a 21 cutoff -- you could set a cutoff a couple of weeks 22 before that hearing date for any depositions that</p> |

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| 93 | <p>1 would be for discovery in those issues.</p> <p>2 MR. STERN: Your Honor, if I may ask a</p> <p>3 point of clarification?</p> <p>4 THE COURT: Yeah.</p> <p>5 MR. STERN: Because these motions are</p> <p>6 being sequenced, are you -- if there's a</p> <p>7 deposition taken let's say it as motion to</p> <p>8 dismiss, the motion to disqualify, is that</p> <p>9 deposition going to be limited only to that</p> <p>10 subject matter and then there will be a subsequent</p> <p>11 deposition, same witness --</p> <p>12 THE COURT: No, I don't think you want to</p> <p>13 do that.</p> <p>14 MR. STERN: I don't think so either.</p> <p>15 THE COURT: So here's the thing, and</p> <p>16 again, I cannot stop everybody from being</p> <p>17 strategic about what they do, but if you want to</p> <p>18 know information from a particular person and</p> <p>19 depose them for that purpose before any one of</p> <p>20 these trials, I think it behooves you to schedule</p> <p>21 them in relation to the hearing you think they're</p> <p>22 relevant for.</p> | 95 | <p>1 certain period of time?</p> <p>2 THE COURT: No. It's more -- and I'm not</p> <p>3 ordering this, I'm just trying to help you all</p> <p>4 come to some understanding of what you think you</p> <p>5 want to do with depositions. If you all want to</p> <p>6 just handle it, handle it. But if you feel like</p> <p>7 it would be important to create a deadline by</p> <p>8 which depositions must be taken, then I can -- I</p> <p>9 can help you with that or come to some</p> <p>10 understanding about that. It doesn't sound like</p> <p>11 there's a lot of interest in that, so that's fine</p> <p>12 too.</p> <p>13 MR. STERN: I'm thinking out loud, because</p> <p>14 there will be, I assume, prehearing supplemental</p> <p>15 briefing from the parties. I think we need to set</p> <p>16 some deadlines for that so this way whatever</p> <p>17 depositions may need to be done, we can measure</p> <p>18 enough time for that supplemental briefing that</p> <p>19 needs to be done.</p> <p>20 THE COURT: Supplemental briefing on what?</p> <p>21 MR. STERN: On each of the motions.</p> <p>22 THE COURT: You intend to file additional</p> |
| 94 | <p>1 However, I don't know all that, I'm not</p> <p>2 going to get into the detail of that, which is why</p> <p>3 I resisted Mr. Lawrence's motion to create some</p> <p>4 sort of discovery plan for you all. I'm trying to</p> <p>5 help you today if you feel like you need to get</p> <p>6 some dates, hard dates, meaning deadlines, not</p> <p>7 specific depo dates. If you all can come to some</p> <p>8 understanding about when you have a cutoff so you</p> <p>9 can get these things done and not debate it, then</p> <p>10 I'm happy to help you. Otherwise you all need to</p> <p>11 sort it out yourself.</p> <p>12 MR. STERN: Your Honor, I think it's</p> <p>13 implied in what you said, but I want to be clear</p> <p>14 about that, I agree to a deadline for depositions.</p> <p>15 We are not agreeing that the depositions have to</p> <p>16 wait until the end of that period, because we</p> <p>17 properly noticed depositions of Dan and Mike</p> <p>18 White, and they were canceled only because of the</p> <p>19 scheduling of that hearing without conferring with</p> <p>20 us. So I want to make sure -- we're not agreeing</p> <p>21 -- there's no order from the Court instructing the</p> <p>22 parties that depositions get to wait until a</p> | 96 | <p>1 briefs?</p> <p>2 MR. STERN: Especially if there's going to</p> <p>3 be more evidence -- these are all evidentiary</p> <p>4 hearings, I think there's a possibility for that.</p> <p>5 THE COURT: Well, if the evidence has not</p> <p>6 been adduced at a hearing before a judge, I don't</p> <p>7 know how you would -- here's the thing, guys, I</p> <p>8 don't know. I'm not going to tell you not to file</p> <p>9 bench briefs, I'm not going to tell you not to</p> <p>10 file briefs. If you want a briefing schedule for</p> <p>11 each of these hearings, let me know. Tell me that</p> <p>12 you want that and we can set that because you</p> <p>13 won't come up with a briefing schedule on your</p> <p>14 own.</p> <p>15 MR. LAWRENCE: I think that's (inaudible)</p> <p>16 --</p> <p>17 THE COURT: Mr. Lawrence, is a yes or a</p> <p>18 no?</p> <p>19 MR. LAWRENCE: That's a yes, Your Honor.</p> <p>20 Because you did it for Ms. Harris's motion, I</p> <p>21 think that's helpful. So for the -- we already</p> <p>22 have the dates for motion to dismiss, and then the</p> |

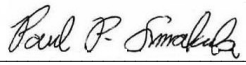
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| 97 | <p>1 motion to dismiss followed by (inaudible.)</p> <p>2 THE COURT: I can't hear any of what</p> <p>3 Mr. Lawrence is saying. So if you want it on a</p> <p>4 similar schedule to what we did with Ms. Harris's</p> <p>5 motion, the reply was due one week before and the</p> <p>6 opposition was -- what was it?</p> <p>7 MR. STERN: There's one week before as</p> <p>8 well -- we can just do one week, one week,</p> <p>9 one week, Your Honor, because there's a lot more</p> <p>10 time here for these.</p> <p>11 THE COURT: Okay.</p> <p>12 MR. STERN: I'm fine with that. I can't</p> <p>13 speak for Greg.</p> <p>14 THE COURT: Here's where we are then on</p> <p>15 that based on the dates you've given me or that</p> <p>16 we've agreed to. May 26th is the hearing date for</p> <p>17 the first set of motions, the dismissal and the</p> <p>18 disqualification. So on the 19th of May would be</p> <p>19 -- I'm just working back one week is the reply,</p> <p>20 and then one week before that, which is the 12th,</p> <p>21 is the opposition, and the opening brief would be</p> <p>22 the 5th. 5/5 for the opening brief, 5/12 for the</p> | 99 | <p>1 and we would respectfully say that the issue is</p> <p>2 still open, and we do not keep deposing --</p> <p>3 THE COURT: So here's how we're going to</p> <p>4 leave it with depositions, all right? I'm not</p> <p>5 presupposing or prejudging anything. If you all</p> <p>6 are noticing deposition and is there is a problem</p> <p>7 with the deposition, you need to promptly notice</p> <p>8 it for a Friday notice and bring it to the Court's</p> <p>9 attention. This happens. We've handled it</p> <p>10 before. We can do it that way. It is possible to</p> <p>11 do it that way. If that gets noticed and it's</p> <p>12 scheduled, it will be heard on a Friday. Okay?</p> <p>13 You don't have to pile in 20 motions and have a</p> <p>14 special day, it's not necessary, okay?</p> <p>15 Now that we've gotten some traction on</p> <p>16 some of these things, I'm hopeful that it will</p> <p>17 help move you ahead. I'm not 100 percent</p> <p>18 confident it will solve everything, but I think</p> <p>19 some movement must occur at this point.</p> <p>20 I think I've heard all the motions,</p> <p>21 though; is that right? We've done them all --</p> <p>22 whether I agreed with you or didn't agree with</p> |
| 98 | <p>1 opposition, 5/19 for the reply. Okay?</p> <p>2 And then for the plea in bar, it looks</p> <p>3 like it will be 5/27 for the reply, 5/20 for the</p> <p>4 opposition, and 5/13 -- you're overlapping a</p> <p>5 little bit with the other one, but there it is for</p> <p>6 the opening brief. And then for your June -- your</p> <p>7 later June trial, the reply is going to be the</p> <p>8 23rd of June, 6/16 will be the opposition, and 6/9</p> <p>9 is your opening brief?</p> <p>10 Does comport with everyone's calendars?</p> <p>11 Do you all understand that?</p> <p>12 MR. LAWRENCE: Yes, Your Honor.</p> <p>13 THE COURT: All right. So that gives you</p> <p>14 some briefing schedules. And is there anything</p> <p>15 else that we didn't resolve today?</p> <p>16 MR. LAWRENCE: With regard to the</p> <p>17 depositions, Your Honor, I would just point out</p> <p>18 that I disagree and I think it's incorrect what</p> <p>19 Mr. Stern is stating regarding depositions or</p> <p>20 subpoenas to his law firm. In fact, the Maryland</p> <p>21 court denied that request for subpoena because of</p> <p>22 the location, and there was briefing on the issue</p> | 100 | <p>1 you, I've heard them all, right, and resolved</p> <p>2 them?</p> <p>3 MR. STERN: I believe you've resolved</p> <p>4 them.</p> <p>5 MR. LAWRENCE: Yes, Your Honor.</p> <p>6 THE COURT: So in terms of drafting</p> <p>7 orders, I think I've given you -- I'm going to ask</p> <p>8 Mr. Stern to draft the protective order that I</p> <p>9 modified because you each have a template, but I</p> <p>10 think that since you were the original propounder</p> <p>11 of the protective order, the confidentiality</p> <p>12 agreement, you can write in the new language. I</p> <p>13 would like that signed off on today.</p> <p>14 MR. STERN: Is there an email address we</p> <p>15 can send directly to your clerk?</p> <p>16 THE COURT: Yes, Ms. Lapinsky is my law</p> <p>17 clerk. She's the one who sent you the link for</p> <p>18 this meeting today or this hearing today.</p> <p>19 MR. STERN: We didn't get the link</p> <p>20 directly --</p> <p>21 MR. McDONALD: Steve, I can share it with</p> <p>22 you.</p> |

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| 101 | <p>1 THE COURT: I want you all to send to each</p> <p>2 other and sign today that confidentiality</p> <p>3 agreement with the revisions I've required.</p> <p>4 MR. STERN: What is the language that Your</p> <p>5 Honor wanted to modify the position, I just want</p> <p>6 to make sure there's no --</p> <p>7 THE COURT: My suggestion was, nothing</p> <p>8 herein precludes a producing party from seeking</p> <p>9 additional protections from the court. That's</p> <p>10 sort of standard kind of boilerplate to me. So</p> <p>11 then I think I have Ms. Harris drafting an order</p> <p>12 setting her hearing. I will ask Mr. Lawrence or</p> <p>13 Mr. McDonald to write up the order setting these</p> <p>14 other motions as we have just set them with the</p> <p>15 briefing schedules as well, okay?</p> <p>16 If they can send them around for</p> <p>17 endorsement. And once it's signed off on, send it</p> <p>18 to my law clerk for me to enter. And I think --</p> <p>19 and then I'll ask Mr. Stern to draft an order on</p> <p>20 the -- basically the dates, the two week</p> <p>21 turnaround on the motion to compel, we'll call</p> <p>22 them motions to compel, or that could be also</p> | 103 | <p>1 it. I have confidence. It's nice to meet or see</p> <p>2 all of you. I don't know everyone one of you, but</p> <p>3 it's a pleasure to see you. Take care.</p> <p>4 MR. LAWRENCE: Thank you, Your Honor.</p> <p>5 MR. McDONALD: Thank you Your Honor.</p> <p>6 (Off the record at 11:52 a.m.)</p> |
| 102 | <p>1 within the protective order order that you're</p> <p>2 doing, that the discovery responses are due on the</p> <p>3 26th, okay?</p> <p>4 And I think that will help you all a</p> <p>5 little bit in the early going. And of course if</p> <p>6 there are disputes that arise that you cannot</p> <p>7 resolve, docket them as timely as you can.</p> <p>8 Normally other than motions to compel or</p> <p>9 dispositive motions, they typically are one-week</p> <p>10 motions, so it shouldn't be really troublesome for</p> <p>11 you to get these docketed, okay? But I'm hopeful</p> <p>12 that we're not going to do too much more of that.</p> <p>13 Any other questions or anything that you</p> <p>14 all have questions about that I need to address</p> <p>15 before we sign off today?</p> <p>16 MR. LAWRENCE: No, Your Honor.</p> <p>17 MR. McDONALD: No, Your Honor.</p> <p>18 THE COURT: I appreciate everybody being</p> <p>19 on board today and entertaining my questions and</p> <p>20 being responsive. It really helps me a lot. And</p> <p>21 I know that you all can work together on this</p> <p>22 case. I know it's fraught, but I think you can do</p> | 104 | <p>1 CERTIFICATE OF SHORTHAND REPORTER-NOTARY PUBLIC</p> <p>2 I, PAUL P. SMAKULA, the officer before whom</p> <p>3 the foregoing deposition was taken, do hereby</p> <p>4 certify that the foregoing transcript is a true</p> <p>5 and correct record of the testimony given; that</p> <p>6 said testimony was taken by me stenographically</p> <p>7 and thereafter reduced to typewriting under my</p> <p>8 direction; that reading and signing was not</p> <p>9 requested; and that I am neither counsel for,</p> <p>10 related to, nor employed by any of the parties to</p> <p>11 this case and have no interest, financial or</p> <p>12 otherwise, in its outcome.</p> <p>13</p> <p>14 IN WITNESS WHEREOF, I have hereunto set my hand</p> <p>15 and affixed my notarial seal this 15th day of</p> <p>16 March, 2021.</p> <p>17</p> <p>18 My commission expires: June 18, 2023.</p> <p>19 </p> <p>20</p> <p>21 NOTARY PUBLIC IN AND FOR</p> <p>22 THE STATE OF MARYLAND</p> |

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